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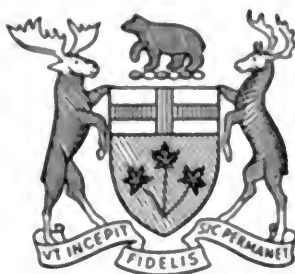
REVISED STATUTES OF ONTARIO, 1950

BEING A

REVISION AND CONSOLIDATION OF THE PUBLIC GENERAL
ACTS OF THE LEGISLATURE OF ONTARIO, PUBLISHED
UNDER THE AUTHORITY OF THE STATUTES
CONSOLIDATION ACT, 1949

IN FIVE VOLUMES

VOL. 2



ONTARIO

TORONTO

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on 52
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REVISED STATUTES OF ONTARIO, 1950

VOLUME 2

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CHAPTER 125

The Factors Act

1.—(1) In this Act,

- (a) "document of title" includes any bill of lading and warehouse receipt, as defined by *The Mercantile Law Amendment Act*, any warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented;
- (b) "goods" includes wares and merchandise;
- (c) "mercantile agent" means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;
- (d) "pledge" includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.

Inter-
pretation.
Imp. Act,
52-53 V.
c. 45, s. 1.
Rev. Stat.
c. 231.

(2) A person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf.
R.S.O. 1937, c. 185, s. 1.

2.—(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith and has not at the time thereof notice that the person making the disposition has not authority to make the same.

Powers of
agent as to
disposition
of goods.
Idem, s. 2.

Revocation
of consent.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of documents of title to goods, any sale, pledge or other disposition which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent; provided that the person taking under the disposition acts in good faith and has not at the time thereof notice that the consent has been determined.

Derivative
documents.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

Presumption.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary. R.S.O. 1937, c. 185, s. 2.

Effect of
pledge of
documents
of title.
Imp. Act,
52-53 V.,
c. 45, s. 3.

3. A pledge by a mercantile agent of the documents of title to goods shall be deemed to be a pledge of the goods. R.S.O. 1937, c. 185, s. 3.

Pledge for
antecedent
debt.
Idem, s. 4.

4. Where a mercantile agent pledges goods as security for a debt due from or liability incurred by the pledgor to the pledgee before the time of the pledge the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge. R.S.O. 1937, c. 185, s. 4.

What con-
sideration
necessary.

5. The consideration necessary for the validity of a sale, pledge or other disposition of goods by a mercantile agent, in pursuance of this Act, may be either a payment in cash or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or of other valuable consideration, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, document, security or other valuable consideration when so delivered or transferred in exchange. R.S.O. 1937, c. 185, s. 5.

Rights
acquired by
exchange of
goods or
documents.
Idem, s. 5.

Agreements
through
clerks, etc.
Idem, s. 6.

6. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent. R.S.O. 1937, c. 185, s. 6.

7.—(1) Where the owner of the goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made in good faith to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

Rights of
consignee
making
advances in
good faith.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent. R.S.O. 1937, c. 185, s. 7.

Sale, etc., by
mercantile
agent.
Imp. Act.
52-53 V.
c. 45, s. 7.

8. Subject to *The Warehouse Receipts Act*, for the purposes of this Act the transfer of a document of title may be by endorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery. R.S.O. 1937, c. 185, s. 8; 1947, c. 101, s. 8.

Mode of
transferring
documents.
Idem, s. 11.
Rev. Stat.
c. 418.

9.—(1) Nothing in this Act shall authorize an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability for so doing.

Liability of
agent.
Idem, s. 12.

(2) Nothing in this Act shall prevent the owner of goods from recovering them from his agent at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

Rights of
owner to
recover
possession,
etc.

(3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set off on the part of the buyer against the agent. R.S.O. 1937, c. 185, s. 9.

Price from
buyer.

10. This Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act. R.S.O. 1937, c. 185, s. 10.

Amplification
of powers
of agents.
Idem, s. 13.

CHAPTER 126

The Factory, Shop and Office Building Act

PART I

1. In this Act,Interpreta-
tion.

- (a) "bakeshop" means any building, premises, workshop, structure, room or place wherein is carried on the manufacture of confectionery, or of bread, biscuits, cakes or any other food product made from flour, or from meal or from both, in whole or in part, and includes any room or rooms used for storing the confectionery, bread, biscuits, cakes and other food products and materials; R.S.O. 1937, c. 194, s. 1, cl. (a); 1944, c. 19, s. 1 (1).
- (b) "bodily injury" includes injury to health; 1944, c. 19, s. 1 (2).
- (c) "child" means a person under the age of fourteen years;
- (d) "court" means the justices of the peace or magistrate, as the case may be, to whom jurisdiction is given by this Act to hear and determine prosecutions under this Part;
- (e) "employer" as applied to a factory, shop, bakeshop or restaurant means any person who in his own behalf, or as the manager, superintendent, overseer or agent has charge of any factory, shop, bakeshop, or restaurant, and employs persons therein, and in the case of an office building includes the superintendent, manager or caretaker thereof; R.S.O. 1937, c. 194, s. 1, cls. (b-d).
- (f) "factory" means,
 - (i) any building, premises, workshop, structure, room or place in which any manufacturing process or assembling in connection with the manufacturing of any goods or products, is carried on,

- (ii) any building, workshop, structure, premises, room or place wherein or within the precincts of which steam, water, electrical power or energy or other power is used to move or work any machinery employed in preparing, manufacturing or finishing, or in any process incidental to the preparing, manufacturing or finishing of any article, substance, material, fabric or compound, or is used to aid the manufacturing process carried on there,
- (iii) any building, workshop, structure, premises, room or place wherein the employer of the persons working there has the right of access and control, and in which or within the precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the making of any goods, substance, article or thing or any part thereof, or the altering, repairing, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing and includes a plant used for the maintenance of aircraft, locomotives and vehicles used for transport purposes; R.S.O. 1937, c. 194, s. 1, cl. (e); 1944, c. 19, s. 1 (3).
- (g) "inspector" means an inspector appointed by the Lieutenant-Governor in Council for enforcing the provisions of this Part and includes the Chief Inspector;
- (h) "mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley or other appliance by which the motion of the first motive power is communicated to any machine appertaining to a manufacturing process; R.S.O. 1937, c. 194, s. 1, cls. (f, g).
- (i) "Minister" means Minister of Labour; 1949, c. 95, s. 6 (1), *part*.
- (j) "office" includes a building or that part of a building occupied and under the control of a separate employer and used for office purposes;
- (k) "office building" means a building used or occupied for office purposes and not as a shop or factory, and includes a part of a building when so used or occupied;
- (l) "owner" means the person for the time being entitled in his own right or as a trustee, mortgagee in posses-

sion, guardian, committee, agent or otherwise to receive the rents, issues and profits of any premises used as a factory, shop, bakeshop, restaurant or office building so far as such rents, issues and profits are not payable solely in respect of the use or occupancy of land apart from any buildings or other improvements erected or situate thereon;

(m) "parent" means a parent or guardian of, or a person having the legal custody of, or the control over, or having direct benefit from the wages of a youth or young girl; R.S.O. 1937, c. 194, s. 1, cls. (i-l).

(n) "regulations" means regulations made under this Act; 1949, c. 95, s. 6 (1), *part*.

(o) "restaurant" means a dining room, cafeteria, cafe, buffet or any place where meals or refreshments are served to order, but does not include restaurants or dining rooms in connection with licensed or standard hotels, unless operated under separate management; R.S.O. 1937, c. 194, s. 1, cl. (n).

(p) "shop" means any building or a portion of a building, booth, stall or place where goods are handled or exposed or offered for sale, and any such building or portion of a building, booth, stall or place where services are offered for sale or where goods are manufactured and which is not a factory to which this Act applies, and includes a bowling alley, pool room and billiard parlour; R.S.O. 1937, c. 194, s. 1, cl. (o); 1944, c. 19, s. 1 (4).

(q) "woman" means a woman of eighteen years of age and upwards;

(r) "young girl" means a girl of the age of fourteen and under the age of eighteen years;

(s) "youth" means a male of the age of fourteen and under the age of sixteen years. R.S.O. 1937, c. 194, s. 1, cls. (p-r).

2.—(1) Nothing in this Part shall in any way conflict or interfere with the powers and duties of local boards of health or the officers appointed under *The Public Health Act*. R.S.O. 1937, c. 194, s. 2 (1). Act not to affect Rev. Stat., c. 306

(2) For the purposes of this Part in respect to sanitary measures the Deputy Minister of Health or any officer of the Administration.

Department of Health designated by the Minister of that Department or any medical officer of health may act jointly with or independently of the inspector under this Part. R.S.O. 1937, c. 194, s. 2 (2) *amended*.

"Office building", definition enlarged.

3. A building, or a part of a building, used and occupied by a municipal or school corporation or by any municipal commission for office purposes shall be deemed an office building within the meaning of this Act, and the municipal or school corporation or commission owning or occupying any such building or part of a building shall be deemed the owner thereof within the meaning of this Act notwithstanding that no rents, issues or profits are derived therefrom. R.S.O. 1937, c. 194, s. 3.

Act not to apply to persons working only at repairs.

4. Nothing in this Part shall extend to a mechanic, artisan or labourer working only in repairing either the machinery in or any part of a factory, shop, bakeshop, restaurant or office building. R.S.O. 1937, c. 194, s. 4.

When separate factory.

5.—(1) A part of a building used as a factory, shop, bakeshop, restaurant or office building may, with the written approval of an inspector for the purposes of this Part be taken to be a separate factory, shop, bakeshop, restaurant or office building.

Dwelling or sleeping room not part of factory.

(2) A place used as a dwelling or sleeping room only shall not be deemed to form part of a factory, shop, bakeshop, restaurant or office building for the purposes of this Part.

When separate and when part.

(3) Where a place situate within the close or precincts forming a factory is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory such place shall not be deemed to form part of that factory for the purposes of this Part, but shall, if otherwise it would be a factory, be deemed to be a separate factory and be regulated accordingly.

When premises in open air not excluded.

(4) Any premises or place shall not be excluded from the definition of a factory by reason only that such premises are or place is in the open air. R.S.O. 1937, c. 194, s. 5.

Certain laundries to be deemed factories.

6.—(1) Every shop, building or room in which one or more persons are employed in doing public laundry work by way of trade or for the purpose of gain shall be deemed a factory to which this Part applies.

(2) This section shall not apply to a dwelling in which a female is engaged in doing custom laundry work at her home for a regular family trade. R.S.O. 1937, c. 194, s. 6. Home laundry work excepted.

7.—(1) Except where machinery operated or driven by steam, electric or other motive power is used, this Part shall not apply to any factory where not more than five persons are employed and no power other than manual labour is used for any manufacturing process carried on there. Where not more than five employed and no power.

(2) A factory in which in any calendar year more than five persons are employed at any one time shall during that year be deemed a factory unless the inspector is satisfied that less than six persons are usually employed therein. Where more than five sometimes employed.

(3) This Part shall not apply to any shop where only members of the employer's own family dwelling in a house to which the shop is attached are employed at home unless machinery is used which is operated by steam, electrical or other power, except hand power. R.S.O. 1937, c. 194, s. 7. Members of family at home in shop.

8.—(1) Where any owner, occupier or tenant of any premises, building, workshop, structure, room or place who has the right of access thereto and control thereof contracts for work or labour to be done therein by any other person, or lets or hires out any part thereof for that purpose, and such other person engages or employs therein any workman, youth, young girl or woman in or for the carrying out or performing of such work or labour, or any part thereof, every such workman, youth, young girl or woman shall, for all the purposes of this Part, be deemed to be in the service and employment of such owner, occupier or tenant. Who to be deemed employed.

(2) In computing the number of persons employed in any place in order to ascertain if such place is a factory to which this Part applies every such workman, youth, young girl or woman shall be counted. R.S.O. 1937, c. 194, s. 8. Mode of computing numbers employed.

9.—(1) Every person found in a factory, except at meal times or except while all the machinery of the factory is stopped, or for any other purpose than that of bringing food to the persons employed in the factory, shall, until the contrary is proved, be deemed for the purposes of this Part to have been then employed in the factory. Evidence as to employment.

(2) Playgrounds, waiting rooms and other rooms belonging to the factory in which no machinery is used or manufacturing process carried on shall not be taken to be part of the factory for the purposes of this section. R.S.O. 1937, c. 194, s. 9. Places not part of factory

When a youth, young girl or woman to be deemed employed.

10.—(1) A youth, young girl or woman who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made, or otherwise the subject of the manufacturing process or handicraft therein shall, save as is herein otherwise provided, be deemed to be employed in such factory.

Apprentices.

(2) For the purpose of this section an apprentice shall be deemed to work for hire. R.S.O. 1937, c. 194, s. 10.

Register.

11.—(1) In every factory, shop and restaurant the employer shall keep a register of the youths, young girls and women employed in the factory, shop and restaurant and of their employment, in the prescribed form, and shall send to the inspector such extracts from any register kept in pursuance of this Part as the inspector from time to time requires for the execution of his duties, and shall permit the inspector at all times to inspect such register.

Penalty.

(2) For every contravention of this section the employer shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$30. R.S.O. 1937, c. 194, s. 11.

Who to be deemed employer in certain cases.

12. Where, in a factory or shop, the owner or hirer of a machine or implement moved by steam, water, electrical power or energy or other power in or about or in connection with which machine or implement any youth, young girl or woman is employed, is some person other than the employer, and such youth, young girl or woman is in the employment and pay of the owner or hirer of such machine or implement he shall, so far as respects any offence against this Part which may be committed in relation to such youth, young girl or woman, be deemed to be the employer. R.S.O. 1937, c. 194, s. 12.

Plans to be submitted.

13.—(1) Before commencing the erection of any building or the alteration of any existing building which it is intended to use as a factory, or where the building or proposed building is over two storeys in height and is intended to be used as a shop, bakeshop, restaurant or office building, the owner shall submit to the Chief Inspector drawings and specifications, in duplicate, of such building or of the proposed alterations thereto and the Chief Inspector shall examine them and if they comply with the requirements of this Act and the regulations he shall certify his approval thereon and the owner shall

proceed with the erection or alterations only in accordance with the drawings and specifications as so certified.

(2) The drawings and specifications shall be sufficient to ^{Sufficiency of plans.} enable the Chief Inspector to obtain full and complete information as to the extent and character of the proposed work and one copy shall be returned to the owner and the other shall be retained in the Department of Labour.

(3) Any person who contravenes any of the provisions of ^{Penalty.} this section shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$200 and in default of payment thereof shall be liable to imprisonment for a term of not more than twelve months. 1944, c. 19, s. 2.

14.—(1) The owner, proprietor or manager of any factory ^{Certificate of inspection before operating a factory.} shall not begin operations until he has received from the inspector a certificate of inspection of the factory and a permit to operate the same.

(2) Every person who contravenes the provisions of this ^{Penalty.} section shall be liable to the penalties provided in section 71. R.S.O. 1937, c. 194, s. 14.

15. Every person shall, within one month after he begins ^{Notice to be sent to inspector by person occupying factory.} to occupy a factory, transmit to the inspector a notice, containing the name of the factory, the place where it is situated, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the motive power therein, and the name of the firm under which the business of the factory is to be carried on, and in default shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$30. R.S.O. 1937, c. 194, s. 15.

ADMINISTRATION

16. The Lieutenant-Governor in Council may for the ^{Appointment of inspectors and Chief Inspector.} purpose of carrying out this Part appoint as many inspectors, male or female, as may be deemed necessary, one of whom he may designate as Chief Inspector who shall have the general supervision and direction of the other inspectors and the carrying out of the provisions of this Part. 1944, c. 19, s. 3.

17. The Lieutenant-Governor in Council may make ^{Regulations.} regulations,

- (a) prescribing the nature of drawings and specifications to be submitted under this Act or the regulations and by whom such drawings and specifications shall be prepared or certified;

- (b) prescribing fees payable upon the approval of drawings and specifications by the Chief Inspector;
- (c) for the protection of the health, safety and welfare of persons employed in any factory, shop, bakeshop, restaurant or office building;
- (d) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Part. 1944, c. 19, s. 4.

Powers of
inspector.

18.—(1) Every inspector may, in the execution of this Act and for enforcing the regulations,

Inspection at
reasonable
time.

- (a) enter, inspect and examine at all reasonable times by day or night any factory, shop, bakeshop, restaurant or office building when he has reasonable cause to believe that any person is employed therein, or any premises when he has reasonable cause to believe that such premises or any part thereof are being used as a factory, shop, bakeshop, restaurant or office building;

Require
production
of registers,
etc.

- (b) require the production of any register, certificate, notice or document required by this Part or the regulations to be kept, and inspect, examine and copy the same;

Take
constable
with him.

- (c) take with him a constable into a factory, shop, bakeshop, restaurant or office building in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty, and whenever the inspector requires any constable authorized to act in the locality to accompany him it shall be the duty of the chief constable and every member of the police force in any locality to render the inspector such assistance in carrying out his duties under this Act as he may require, and to put down any resistance, obstruction or hindrance by force if necessary;

Make
examination
and inquiry.

- (d) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Part are complied with so far as respects the factory, shop, bakeshop, restaurant or office building and the persons employed therein;

Examine
persons.

- (e) examine either alone or in the presence of any other persons, as he thinks fit, with respect to matters under this Part, every person whom he finds in a factory, shop, bakeshop, restaurant or office building or whom he has reasonable cause to believe to be, or to

have been within the two preceding months, employed in a factory, shop, bakeshop, restaurant, or office building, and require such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined;

(f) for the purpose of any investigation, inquiry or examination made by him under the authority of this Part, administer an oath to and summon any person to give evidence; Administer oaths.

(g) exercise such other powers as may be necessary for carrying out the provisions of this Part. Exercise other powers.

(2) The owner and employer and his or their agents and servants shall furnish all necessary means in his or their power required by the inspector for any entry, inspection, examination, inquiry or the exercise of his powers in relation to such factory, shop, bakeshop, restaurant or office building. Duty of owner and employer.

(3) Every person who wilfully delays the inspector in the exercise of any power under this section, or who fails to comply with a requisition or summons of the inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or who conceals or attempts to conceal, or prevents or attempts to prevent a youth, young girl or woman from appearing before or being examined by the inspector shall be deemed to obstruct an inspector in the execution of his duties under this Part. Obstructing inspector.

(4) Where the inspector is obstructed in the execution of his duties the person obstructing him shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$30, and where he is so obstructed in a factory, shop, bakeshop, restaurant or office building the employer shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$30, or where the offence is committed at night, \$100. Penalty for obstructing.

(5) It shall be the duty of the inspectors appointed under this Act to assist with the enforcement of *The Operating Engineers Act* by reporting to the Board of Examiners any violation thereof, and to furnish to the Board such information as they may have as to the conduct and capability of any person holding or applying for a certificate. Inspector's duties in enforcing provisions as to steam plants and hoisting plants. Rev. Stat. c. 235.

(6) It shall be the duty of every inspector appointed under this Act to report any violation of section 9 of *The Minimum Wage Act* to The Industry and Labour Board. Inspector's duties as to enforcement of Rev. Stat. c. 235. R.S.O. 1937, c. 194, s. 17.

Certificate
of appoint-
ment.

19. Every inspector shall be furnished with a certificate of his appointment under the hand and seal of the Minister and on applying for admission to any premises shall, if required, produce such certificate. R.S.O. 1937, c. 194, s. 18.

Inspector
may take
medical
practitioner,
etc., into
factory.

20. The inspector, whenever he deems it necessary, may take with him into any premises a legally qualified medical practitioner, medical officer of health or sanitary inspector. R.S.O. 1937, c. 194, s. 19.

Warrant
for entering
dwelling
without
consent of
occupier.

21.—(1) The inspector, before entering, in pursuance of the powers conferred by this Part without the consent of the occupier, any room or place actually used as a dwelling, shall obtain such warrant as is hereinafter mentioned from a justice of the peace.

Issue of
warrant.

(2) The justice, if satisfied by information on oath that there is reasonable cause to suppose that any provision of this Part is contravened in any such room or place, shall grant a warrant under his hand authorizing the inspector named therein, at any time not exceeding one month from the date thereof, to enter the room or place named in the warrant and exercise therein the powers of inspection and examination conferred by this Act, and the provisions of this Part with respect to obstruction of the inspector shall apply. R.S.O. 1937, c. 194, s. 20.

When
inspector
may object
to give
evidence.

22. Where an inspector is called as a witness he may, by the direction and on behalf of the Attorney-General or of a member of the Executive Council, object to giving evidence as to any premises inspected by him in the course of his duty. R.S.O. 1937, c. 194, s. 21.

Notice to
be affixed in
factory

23.—(1) There shall be affixed by the inspector at the entrance of a factory and in such other convenient parts of every factory, shop, bakeshop, restaurant and office building as the inspector directs, and it shall be the duty of the employer to see that all such notices are constantly kept so affixed in the form directed by the inspector and in such position as to be easily read by the persons employed,

of provisions
of Part and
regulations

(a) such notices of the provisions of this Part and of any regulations made thereunder as the inspector deems necessary to enable the persons employed to become acquainted with their rights, liabilities and duties under this Part;

name and
address of
inspector

(b) a notice of the name and address of the inspector;

(c) in the case of a factory a notice of the clock, if any, ^{clock by which period of employment is regulated} by which the period of employment and times for meals in the factory are regulated;

(d) every other notice and document required by this ^{other notices.} Part to be so affixed.

(2) In the event of a contravention of any provision or ^{Penalty.} requirement of this section the employer shall be guilty of an offence and liable to a penalty of not more than \$20, and every person who pulls down, alters or defaces any such notice shall be guilty of an offence and liable to a like penalty. R.S.O. 1937, c. 194, s. 22.

24.—(1) Any notice, order, requisition, summons or ^{Notices, etc., and mode of service.} document required or authorized to be served or sent for the purposes of this Part may be served or sent by delivering the same to or at the residence of the person on or to whom it is to be served or sent, or where that person is an employer, by delivering the same, or a true copy thereof, to his agent or to some person in the factory, shop, bakeshop, restaurant or office building of which he is employer.

(2) Such notice, order, requisition, summons or document ^{By mailing.} may also be served or sent by post, and if so served or sent shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that it was properly addressed and mailed, and where it is required to be served on or sent to an employer it shall be deemed to be properly addressed if addressed to the factory, shop, bakeshop, restaurant or office building in respect of which he is employer, with the addition of the proper postal address, but without naming the employer. R.S.O. 1937, c. 194, s. 23.

EMPLOYMENT

25. No child shall be employed in a factory, shop, bake- ^{Employment of children.} shop, restaurant or office building. R.S.O. 1937, c. 194, s. 24.

26. The Lieutenant-Governor in Council may prohibit the ^{Prohibiting employment of young girls and youths.} employment of young girls and youths in factories the work in which he deems dangerous or unwholesome. R.S.O. 1937, c. 194, s. 25; 1946, c. 27, s. 1.

27. No person under sixteen years of age shall be employed ^{Employment of adolescents.} in any factory, shop, bakeshop, restaurant or office building during school hours unless such person shall have furnished to the employer a certificate issued in accordance with *The*

Rev. Stat.
c. 6.

Adolescent School Attendance Act permitting the absence of such person from school, and such certificate shall be kept on file by the employer and produced whenever called for by the inspector. R.S.O. 1937, c. 194, s. 26.

Seats to be
provided
for female
employees
in shops.

28.—(1) In all rooms of any shop in which young girls or women are employed the employer shall at all times provide and keep therein a sufficient number of chairs or seats suitably placed for the use of every such young girl or woman, and shall permit her to use such chairs or seats when not necessarily engaged in the work or duty for which she is employed, and the employer shall not by any open or covert threat, rule or other intimation, expressed or implied, or by any contrivance, prevent any female employee from using such chairs or seats.

Supplying
seats for
female
employees
in factories
and offices.

(2) Where in the opinion of the inspector the whole or a substantial portion of the work upon which female employees are engaged in any department of a factory or office in which women or young girls are employed can be efficiently performed while such female employees are seated, the employer shall provide such chairs or seats as may be directed in writing by the Chief Inspector.

Penalty.

(3) Every person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$25. R.S.O. 1937, c. 194, s. 27.

Hours of
employment.

29. Except as provided in sections 30 and 31, in a factory, shop, bakeshop, or restaurant,

Total hours
daily and
weekly;

(a) no youth, young girl or woman shall be employed for more than ten hours in one day, nor shall any such person be so employed for more than sixty hours in any one week;

hours of
labour;

(b) the hours of labour for any such person in any one day shall not be earlier than seven o'clock in the forenoon or later than half-past six o'clock in the afternoon in a factory or eleven o'clock in the afternoon in a shop or restaurant unless a special permit in writing is obtained from the inspector;

employment
in two
different
places;

(c) no youth, young girl or woman who has been previously on any day employed in any factory, shop or restaurant for the number of hours permitted by this Part shall, to the knowledge of the employer, be employed on the same day in any other factory, shop or restaurant, and no such person who has been so employed in a factory, shop or restaurant for less than

such number of hours shall be employed in any other factory, shop or restaurant on the same day for a longer period than will complete such number of hours;

- (d) the employer shall allow every youth, young girl or woman not less than one hour at noon of each day for meals, and such hour shall not be counted as part of the time herein limited for the employment of any such person. R.S.O. 1937, c. 194, s. 29. (time for meals.)

30.—(1) Subject to the regulations, where,

Exemption by inspector.

- (a) any accident which prevents the working of a factory happens to the motive power; or Accidents to motive power.
- (b) from any other occurrence beyond the control of the employer the machinery, or any part of the machinery, of any factory cannot be regularly worked; or Machinery unworkable.
- (c) the customs or exigencies of trade require that the youths, young girls or women working in a factory, or in certain processes in a factory, shall be employed for longer than the prescribed period, Customs or exigencies of trade.

the inspector may, on proof to his satisfaction of such accident, occurrence, custom, or exigency of trade, give permission in writing for such exemption from the observance of the foregoing provisions as will, in his judgment, fairly and equitably to the employers of, and to the youths, young girls and women in such factory, make up for any loss of labour from such accident or occurrence or meet the requirements of such custom or exigency of trade.

(2) If the inspector permits such exemption,

Hours of employment during period of exemption.

- (a) no youth, young girl or woman shall be employed before the hour of six o'clock in the morning nor after the hour of nine o'clock in the afternoon; Not before 6 a.m. and after 9 p.m.
- (b) the hours of labour for youths, young girls and women shall not be more than twelve and one-half in any one day nor more than seventy-two and one-half in any one week; Not more than 12 ½ hours a day or 72 ½ a week.
- (c) such exemption shall not comprise more than thirty-six days in the whole in any twelve months, and in reckoning such period of thirty-six days every day on which the youth, young girl or woman has been employed overtime shall be taken into account; Period of exemption.

Time for additional meal during period of exemption.

- (d) during the continuance of such exemption, in addition to the hour for the noonday meal, there shall be allowed to every youth, young girl or woman so employed in the factory on any day to an hour later than seven of the clock in the afternoon not less than forty-five minutes for another meal between five and eight of the clock in the afternoon; and

Notice of particulars of exemption.

- (e) in every factory with respect to which any such permission for exemption is given there shall, in compliance with section 23, be affixed a notice specifying the extent and particulars of such exemption. R.S.O. 1937, c. 194, s. 30.

Double shift.

31.—(1) Notwithstanding anything herein contained, the Chief Inspector may grant a permit authorizing the operation of a factory by a double shift but the hours of labour shall not exceed eight hours for each shift nor be more than sixteen hours for both shifts and such double shift shall be between the hours of six o'clock in the forenoon and eleven o'clock in the afternoon.

Time for meal.

(2) Where an employer operates a double shift, every youth, young girl and woman shall be allowed not less than one hour for a noon-day meal or evening meal as the case may be, and the time for the noon-day meal shall be between ten o'clock in the forenoon and twelve o'clock noon and for the evening meal between six o'clock and eight o'clock in the afternoon. R.S.O. 1937, c. 194, s. 31.

Payment for overtime.

32. In all cases where any youth, young girl or woman works beyond the number of hours in any one day or in any one week as provided in this Act, and whether the inspector under this Act has permitted exemption or not, such youth, young girl or woman shall be entitled to be paid wages for such overtime, and The Industry and Labour Board shall have the right to establish a rate of wage for all such overtime worked in any one day or in any one week. R.S.O. 1937, c. 194, s. 32.

Notice of hours of employment to be affixed in factory.

33. Notice of the hours between which youths, young girls or women may be employed in a factory shall be in such form as may be prescribed by the regulations, and shall be signed by the inspector and by the employer, and shall be posted up during the period covered by such notice in such conspicuous place or places in the factory as the inspector requires. R.S.O. 1937, c. 194, s. 33.

34.—(1) In every factory or shop the employer shall,

(a) if the inspector so directs in writing, prohibit any person from taking meals in any room in which any manufacturing process is being carried on; Meals where manufacturing going on.

(b) if thirty-five or more females are employed, or if the inspector so directs in writing, provide a room, together with the necessary equipment in the factory or shop or the precincts thereof, satisfactory to the inspector for the purposes of an eating room for persons employed in the factory or shop, and no part of the expense of providing such room and equipment shall be payable by or chargeable to the wages of the employees. Eating rooms.

(2) In a factory or shop no person shall take or be allowed to take food into any room where paint, varnish, dye, white lead, arsenic or any other poisonous substance is exposed, or where deleterious fumes, dust or gases are known to be present, and drinking water in any such room shall be taken directly from a tap or suitably closed receptacle. 1944, c. 19, s. 5. Food and drinking water.

35. Where a youth, young girl or woman is employed in a factory, shop or restaurant in which there is a contravention of any of the provisions of sections 29 and 30, such youth, young girl or woman shall be deemed to be unlawfully employed and so that his or her health is likely to be injured. R.S.O. 1937, c. 194, s. 35. Unlawful employment in contravention of ss. 29, 30.

36.—(1) In this section, "camp" means shelter provided for the lodging of six or more persons employed in gainful occupation for a temporary purpose and for a period not exceeding six months. "Camp" defined.

(2) No person shall contract for the employment of, or employ women or girls in any occupation who during their employment lodge in a camp, unless and until a permit has been obtained from the Chief Inspector authorizing such employment. Permit to employ women.

(3) Every such permit shall be conditional upon compliance with the regulations made under this section, and the Chief Inspector may cancel or suspend any permit issued by him under subsection 2 for non-compliance with any such regulation. Condition of permit.

(4) The Lieutenant-Governor in Council may make regulations respecting, Regulations.

- (a) the sanitary and other conditions to be observed in a camp;
- (b) the season during which employment in a camp may be permitted and the hours of labour of women and girls;
- (c) the proper supervision of a camp, including physical and moral protection for women and girls employed therein and the appointment and duties of a suitable matron and female superintendent in a camp;
- (d) the location, drainage and arrangement of a camp, the materials to be used and the class of buildings or other shelter to be provided;
- (e) the provision of a healthful and suitable supply of food and pure water and the conditions under which the same shall be prepared and served;
- (f) washing facilities and bedding and flooring to be provided in such camps.

Penalty.

(5) Every person who employs women or girls in a camp without the permit required by subsection 2 or who refuses or neglects to comply with any regulation made under this section, shall be guilty of an offence and liable to a penalty of not less than \$25 and not more than \$100, and in default of payment of the same shall be liable to imprisonment for a term of not more than twelve months. R.S.O. 1937, c. 194, s. 36.

HEALTH AND SAFETY**Lighting
buildings.**

37.—(1) The employer in every factory, shop, bakeshop, restaurant or office building shall, during working hours, keep the factory, shop, bakeshop, restaurant or office building, including all passages and sanitary conveniences used in connection therewith and under his control, properly lighted and heated so as not to be injurious to the health, safety and comfort of the employees, and the owner of every building used as a factory, shop, bakeshop, restaurant, or office building, shall at all times keep the same or such parts thereof as are under his control or are used in common by the tenants or occupants of the building, properly lighted and heated so as not to be injurious to the health, safety or comfort of persons employed in the building or using or having access to the same.

(2) Every owner or employer who for thirty days or for Penalty. such extended period as the inspector allows, refuses or neglects to comply with the requirements of this section after being notified in writing with regard to the same by the inspector, shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$200, and in default of payment shall be liable to imprisonment for a term of not more than twelve months. R.S.O. 1937, c. 194, s. 37.

38.—(1) In a factory, shop, bakeshop, restaurant or office, the employer shall provide,

- (a) where ten or more females are employed, a rest room Rest rooms. or other space affording reasonable privacy, together with one or more couches or cots, and chairs, satisfactory to the inspector; and
- (b) where thirty-five or more females are employed, or Matron. when deemed necessary by the inspector, a matron or female supervisor to have charge of the welfare of the female employees. 1944, c. 19, s. 6 (1).

(2) Subsection 1 or any part thereof shall not apply to any Exemptions. case where, owing to the nature of the occupation or for other reasons, the Chief Inspector dispenses with compliance therewith in writing signed by him. R.S.O. 1937, c. 194, s. 38 (2); 1944, c. 19, s. 6 (2).

(3) Every factory or shop in which the employer neglects Effect of non-compliance. to comply with this section after notice in writing from the inspector shall be deemed to be kept so that the health of the employees is endangered. R.S.O. 1937, c. 194, s. 38 (3).

39.—(1) The owner of every building used as a factory, Conveniences for employees. shop, bakeshop, restaurant, or office building shall,

- (a) provide toilet rooms for male and female employees Toilet rooms. with separate approaches thereto and clearly painted signs indicating for which sex the toilet rooms are provided, and such toilet rooms shall be equipped with one water-closet and one urinal for every twenty-five male employees and one water-closet for every fifteen female employees and every water-closet shall be separated from the others by partitions, but where a municipal water supply is not available sanitary privies, chemical or other type of closets suitable to the inspector, may be substituted for water-closets;
- (b) provide separate wash rooms for male and female Wash rooms. employees with separate approaches thereto and

clearly painted signs indicating for which sex the rooms are provided and they shall be equipped with wash basins or equivalent washing facilities satisfactory to the inspector, connected to a source of hot and cold water with one wash basin or the equivalent for every fifteen employees;

Remedying
cause of
effluvia.

- (c) be responsible for the remedying of any effluvia arising from any drain or defective plumbing and for any repairs required to keep the building in a safe and habitable condition;

Supplying
drinking
water.

- (d) arrange for a supply of pure drinking water available for each occupier. R.S.O. 1937, c. 194, s. 39 (1); 1944, c. 19, s. 7.

Regulations.

- (2) The Lieutenant-Governor in Council may prescribe such additional regulations with respect to such conveniences as may be deemed proper.

Contra-
vention.

- (3) The owner of every factory, shop, bakeshop, restaurant or office building who for thirty days, or such extended period as the inspector in writing allows, refuses or neglects to comply with the requirements of subsection 1 or of the regulations after being notified in writing in regard to the same by the inspector, shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$200 and in default of payment shall be liable to imprisonment for a term of not more than twelve months. R.S.O. 1937, c. 194, s. 39 (2, 3).

Penalty.

Contra-
vention of
regulations
of Hydro-
Electric
Power Com-
mission.

- 40.** A factory, shop, bakeshop, restaurant or office building in which a contravention of the regulations made by The Hydro-Electric Power Commission of Ontario under *The Power Commission Act* occurs shall be deemed to be kept so that the safety of the persons employed therein is endangered. R.S.O. 1937, c. 194, s. 40.

Rev. Stat.,
c. 281.

Sanitary
require-
ments.

- 41.**—(1) The employer of every factory, shop, bakeshop or restaurant shall,

Removal
of refuse.

- (a) keep it in a clean and sanitary condition and free from any effluvia arising from refuse of any kind, and remove, at least daily, by a suitable method, all accumulations of dirt and refuse from the floors, work tables, passages and stairways, and keep all windows and skylights, as far as practicable, clean on both the inner and outer surfaces and free from obstructions;

- (b) keep toilet rooms and washrooms, water-closets, ^{Cleanliness of wash-rooms.} urinals or other sanitary conveniences in good repair and in a sanitary condition, and keep closets separated for male and female employees and provide conveniences to the satisfaction of the inspector for the employees using them;
- (c) heat the premises throughout and regulate the ^{Temperature.} temperature so as to be suitable for the work to be performed therein, and not to be injurious to the health or comfort of the employees, but in no case shall the temperature be less than sixty-eight degrees Fahrenheit unless authorized by the inspector in writing;
- (d) ventilate the factory, shop, bakeshop or restaurant ^{Ventilation.} in such a manner as to keep the air reasonably pure and so as to render harmless, as far as reasonably practicable, all gases, vapours, dust or other impurities generated in the course of any manufacturing process or handicraft carried on therein that may be injurious to health;
- (e) not allow overcrowding while work is carried on ^{Over-crowding.} therein so as to be injurious to the health of the persons employed therein, the standard to be allowed being three hundred cubic feet of room space for each employee;
- (f) provide and maintain for the use of the employees ^{Towels, soap and conveniences.} a convenient and sufficient supply of individual clean towels, soap, toilet paper and in each toilet room used by females a suitable covered receptacle;
- (g) if the manufacturing process carried on in any part ^{Damp floors.} of the premises renders the floor liable to be wet to such an extent that the health of any person employed therein is likely to be endangered, see that adequate means are provided for the proper draining of such floors;
- (h) provide a satisfactory supply of safe drinking water ^{Drinking water.} and such supply of drinking water shall be, when not taken directly from a water-pipe, contained in a suitable covered vessel having a drain faucet, and shall be renewed at least daily, and the employer shall provide, except when the water is delivered in an upward jet from which the employees can con-

veniently drink, a sufficient supply of individual drinking cups, and the faucet or jet for such drinking water shall be at least eight feet distant from any closet or urinal; and

Accommoda-
tion for
clothing.

- (i) provide suitable accommodation for clothing not worn by employees during working hours and for work clothes which must be dried or be cleaned or be kept separate from street clothes due to the presence of poisonous, infectious or irritating materials. 1944, c. 19, s. 8 (1).

Showers
and wash-
basins.

- (2) The employer of every foundry and other factory wherein the health of the employees, in the opinion of the inspector, is likely to be endangered by the presence of poisonous, irritating or infectious materials or gases or by extremes of temperature or humidity shall provide such shower baths and wash basins, in addition to those required under section 39, supplied with sufficient hot and cold water as the inspector may deem necessary. 1944, c. 19, s. 8 (2).

Dust.

- (3) In every factory or shop where any process is carried on by which dust is generated and is inhaled by the workers to an injurious extent, then subject to the regulations, the inspector may, if such inhalation can by mechanical means be prevented or partially prevented, direct that such means shall be provided within a reasonable time by the employer who shall be bound so to provide them.

Grinding,
polishing
or buffing.

- (4) Where grinding, polishing or buffing is carried on in any factory or shop subsection 3 shall apply irrespective of the number of persons employed therein.

Employ-
ment of
persons
affected with
disease.

- (5) No employer shall knowingly permit or suffer any person to work in a factory or shop in which food or food products or materials are manufactured, stored or kept for sale or sold or in a restaurant, who is affected with pulmonary tuberculosis or with scrofula, or with any venereal disease or with any communicable skin disease, and every employer shall keep himself and his employees in a reasonably healthy condition.

Contra-
vention.

- (6) The employer of a factory, shop or restaurant who for thirty days refuses or neglects to comply with the requirements of this section or with the regulations after being notified in writing in regard to the same by the inspector, shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$200 and in default of payment shall be liable

to imprisonment for a term of not more than twelve months. R.S.O. 1937, c. 194, s. 41 (3-6).

(7) The Lieutenant-Governor in Council may make regulations requiring the employer of a factory, shop, bakeshop, restaurant or office to provide at his own expense a suitable room or rooms with adequate equipment and supplies for rendering first aid in accidents and sickness and for the supervision of the general health of the employees during working hours. 1944, c. 19, s. 8 (3). Regulations re first aid facilities.

42.—(1) Every employer of an office shall, Sanitary requirements.

(a) see that the office is kept in a clean and sanitary condition and properly ventilated, heated and lighted so as not to be injurious to the health or comfort of the persons employed therein; Office to be kept clean and sanitary.

(b) not allow overcrowding so as to be injurious to the health of the persons employed therein; No overcrowding.

(c) provide and maintain for the use of persons employed therein the conveniences indicated in clauses *f* and *h* of subsection 1 of section 41. R.S.O. 1937, c. 194, s. 42 (1); 1944, c. 19, s. 9 (1).

(2) Where in an office building the water-closets, urinals or other conveniences are not situate in that part of the building occupied by and under the control of an employer it shall be the duty of the owner, and where such conveniences are situate in that part of the building occupied by and under the control of a separate employer, it shall be the duty of such employer to keep the same in good repair and in a sanitary condition. R.S.O. 1937, c. 194, s. 42 (2); 1944, c. 19, s. 9 (2). Office building.

(3) The owner of every office building shall at all times keep the same or such parts thereof as are used in common by the tenants or occupants thereof and are under his control, in a clean and sanitary condition and so as not to be injurious to the health of persons employed in the building or using or having access to the same. Clean and sanitary condition.

(4) Every owner or employer who, for thirty days or for such extended period as the inspector allows, refuses or neglects to comply with the requirements of this section after being notified in writing in regard to the same by the inspector shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$200 and in default of payment shall be liable to imprisonment for a term of not more than twelve months. R.S.O. 1937, c. 194, s. 42 (3, 4). Penalty

Recovery by owner from tenant of expenditures.

43. Where an owner is required under this Act to do anything which as between him and his tenant it is not his but the tenant's duty to do, he shall be entitled to recover from the tenant the amount of any expenditure incurred in doing it. R.S.O. 1937, c. 194, s. 43.

Restrictions as to sleeping place.

44. Without the written consent of the inspector no part of a factory shall be kept or used as a bedroom or sleeping place. R.S.O. 1937, c. 194, s. 44.

Exception as to laundries.

45. Section 44 shall not apply to a laundry in which not more than five persons are employed. R.S.O. 1937, c. 194, s. 45.

Laundry work not to be done in sleeping or living room.

46. No public laundry work shall be done in a room used for a sleeping or living room or in a room used for cooking or preparing meals. R.S.O. 1937, c. 194, s. 46.

Certain laundresses excepted.

47. Section 46 shall not apply to a female engaged in doing custom laundry work at her home for a regular family trade. R.S.O. 1937, c. 194, s. 47.

Restrictions as to stables.

48. A stable or garage shall not be kept or used under the same roof as a factory or bakeshop unless there is between the stable or garage and the factory or bakeshop a sufficient brick or other partition wall approved by the inspector separating the one from the other. R.S.O. 1937, c. 194, s. 48.

Interpretation.

49.—(1) In this section,

- (a) "employer" means any person who in his trade or business in personal or household articles gives employment to homeworkers;
- (b) "employment" means the performance by a homeworker for wages of any work or service in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any personal or household article or any part thereof;
- (c) "homeworker" means any person who for wages in his home or elsewhere in premises in his occupation and not occupied by the employer engages in employment in respect to personal or household articles;
- (d) "personal or household article" means any garment, suit, clothing, wearing apparel or other article of personal dress or attire, and any article of domestic household use, and includes any materials and substances therefor;

(e) "wages" means wages within the meaning of *The Minimum Wage Act*. Rev. Stat., c. 235.

(2) Every employer who gives employment to homeworkers and every homeworker shall obtain a permit from the inspector, and no employer or homeworker shall give or be engaged in employment in connection with personal or household articles without such a permit. Permits for employment of homeworkers.

(3) Every employer and homeworker who requires a permit shall apply therefor in writing to the inspector upon the form approved for the purpose by the Minister, and shall furnish such information and proofs as the form may prescribe. Applications for permits.

(4) Every permit issued by the inspector shall specify the purposes and the scope of authority granted thereby, which may be enlarged at any time by endorsement thereon signed by the inspector. Scope of permit.

(5) The applications for permits and the permits to be issued thereunder shall be in two separate forms, the one for employers' permits and the other for homeworkers' permits. Forms.

(6) No employer's permit shall be issued to any person unless the inspector is satisfied that he is likely to comply with this Act and *The Minimum Wage Act*, and no homeworker's permit shall be issued to any person unless the inspector is satisfied that he in respect to health, and his home or other premises in respect to sanitation, are fit for the purposes of employment in respect to personal or household articles. Who may obtain permit. Rev. Stat., c. 235.

(7) No employer or homeworker shall in respect to personal or household articles, Conditions of employment.

(a) give or be engaged in employment unless the employer has an employer's permit and the homeworker has a homeworker's permit, and such permits are not cancelled;

(b) give or be engaged in employment beyond the purposes and scope of authority of the permit of the employer or homeworker;

(c) give or be engaged in employment at wages less than those established by The Industry and Labour Board established under *The Department of Labour Act* for the employment. Rev. Stat., c. 95.

Employer's
register.

(8) Every employer shall keep a written register open to the inspector and in a form satisfactory to him in which the employer shall record the name, address and permit number of every homeworker to whom he gives employment, particulars of the personal or household articles given to his employment, and the dates and times of such employment and the wages paid therefor.

Inspection
of register
and
premises of
employer.

(9) The inspector may at any time enter the premises of an employer to inspect the register of homeworkers' employment, and any personal or household article to be given to or which has been returned by a homeworker.

Inspection
of premises
of home-
worker.

(10) The inspector may at any reasonable hour enter the home or other premises of a homeworker to inspect the same and the sanitation thereof, and any personal or household article therein given to him for employment. R.S.O. 1937, c. 194, s. 49 (1-10).

Impounding
articles for
protection
of public
health.

(11) The inspector may at any time seize and impound any personal or household article in the possession of any employer or homeworker, or in the possession of any other person in his trade or business if such article in the opinion of the inspector may affect or be injurious to the public health by reason of some unsanitary condition or communicable disease having existed in the home or other premises of a homeworker while the article was in his possession, and every article so impounded shall forthwith be delivered by the inspector to the local medical officer of health or sanitary inspector for disinfection or destruction. R.S.O. 1937, c. 194, s. 49 (11); 1942, c. 17, s. 1.

Disinfection
or destruc-
tion of
impounded
articles.

(12) The medical officer of health or sanitary inspector to whom any impounded personal or household article is delivered by the inspector shall cause the same to be disinfected and if, in the opinion of the medical officer of health, disinfection may not be sufficient to protect the public health, he may direct that the article be destroyed.

Return of
articles.

(13) Any personal or household article which has been impounded and disinfected shall be returned to the person from whose possession it was taken upon payment of the expense of impounding and disinfection, and if any personal or household article is directed by the medical officer of health to be destroyed, no claim for compensation for the destruction or loss of such article shall be made or arise.

Prohibition
as to sale of
articles.

(14) No person shall knowingly sell, expose for sale, or otherwise deal in any personal or household article in respect

to which there has been a contravention of this Act or the regulations.

(15) The inspector may at any time cancel any employer's ^{Cancellation of permits.} or homeworker's permit issued hereunder for any contravention of this Act or the regulations, or of *The Minimum Wage Act* or regulations, or order made thereunder, and may cancel a homeworker's permit if, in his opinion, the health of the homeworker or the state of sanitation of his home or other premises used by him are likely to be injurious to the public health, or if any communicable disease exists in such home or other premises. R.S.O. 1937, c. 194, s. 49 (12-15). ^{Rev. Stat., c. 235.}

50.—(1) Young girls and women in a factory shall during working hours wear a close-fitting cap or other suitable headgear which shall entirely confine their hair so as to avoid contact with machinery, shafting, belting or any material being handled. 1944, c. 19, s. 10. ^{Female employees to wear caps.}

(2) The manager, superintendent, foreman or other person in charge shall see that employees are fully notified of the provisions of this section. R.S.O. 1937, c. 194, s. 50 (2). ^{Notification.}

51.—(1) No youth, young girl or woman shall be allowed by the employer of a factory, shop or bakeshop, ^{Youths, young girls and women around dangerous machinery.}

- (a) to clean any part of the machinery in a factory which is mill-gearing while the machinery is in motion;
- (b) to work between the fixed and traversing part of any self-acting machine while the machine is in motion;
- (c) to work at any machine without first having received adequate instruction upon its operation and any dangers connected therewith; or
- (d) to work at any machine without adequate supervision by a person having thorough knowledge of and experience with the machine.

(2) Any factory, shop or bakeshop in which a youth, young girl or woman is allowed to clean or work in contravention of this section shall be deemed to be kept so that the safety of persons employed therein is endangered. 1944, c. 19, s. 11. ^{Contravention.}

52. No person under the influence of or having in his possession any intoxicating liquor shall enter or be in any factory. 1944, c. 19, s. 12. ^{Intoxicated persons.}

Protection
from
machinery.

53.—(1) Where the inspector deems that any machinery, appliance, matter or thing in a factory is a source of danger to the health or safety of the employees or of persons having access to the factory, he shall give notice in writing to the employer or owner directing him within a period of thirty days or such period as the inspector may deem necessary, to take such measures for guarding such machinery, appliance, matter or thing, or protecting the safety or health of employees and other persons against danger therefrom, as the inspector may deem requisite and upon the failure to comply with the inspector's direction within such period, the use of the machinery, appliance, matter or thing shall be discontinued until the inspector's direction has been complied with.

Failure to
comply with
inspector's
direction.

(2) Any factory in which the employer or owner fails to comply with the inspector's direction within the period specified and in which the employer or owner permits any machinery, appliance, matter or thing to be used in contravention of subsection 1, shall be deemed to be kept so that the safety of the persons employed therein is endangered. 1942, c. 17, s. 2.

Dangerous
places to be
fenced or
guarded.

54.—(1) Where any mill-gearing, machinery, appliance, place, matter or thing, or part or parts thereof, in a factory is dangerous to any person, it shall be safely fenced or guarded unless its position, construction or attachment assures protection.

Safety
devices.

(2) Where any dangerous machinery, or part or parts thereof, cannot be safely fenced or guarded, the requirements of subsection 1 shall be deemed to have been complied with if the machinery is provided with a safety device which automatically prevents any person operating it from coming into contact with any dangerous part.

Shears, etc.

(3) Not more than one person shall work within reach of any guillotine-knife, shears, press dies, in-running rolls or any similar device.

Cleaning
machinery.

(4) Where an inspector has given notice in writing to an employer, no machinery other than steam engines shall be cleaned while in motion. 1948, c. 27, s. 1.

Dangerous
fumes;
extreme
tempera-
tures.

(5) No person shall be allowed to enter a tank, chamber, pit, pipe, flue or other confined space in which dangerous fumes, dusts or extreme temperatures are liable to be present in a factory unless,

(a) such confined space has a manhole or other means to easy egress and has been thoroughly ventilated and tested to be safe for entry;

- (b) such person is wearing suitable breathing apparatus and a belt to which there is securely attached a rope the free end of which is held by a person outside the confined space;
- (c) when deemed necessary by the inspector, there is conveniently available suitable reviving apparatus and a person trained in the operation thereof,

and the belt, rope and other apparatus which is used for such purpose shall be periodically inspected by the employer and maintained in good working order. 1944, c. 19, s. 13.

(6) A factory in which a contravention of this section or of the regulations made thereunder occurs shall be deemed to be kept so that the safety of the persons employed therein is endangered. R.S.O. 1937, c. 194, s. 53 (3). Contra-
vention.

55.—(1) Where coal oil, petroleum, benzine, naphtha, gasoline or explosives of any kind or any combustible or flammable material are kept or stored in a factory or shop they shall be kept stored when not in actual use in a building separate from the other parts of the factory or shop or in a fireproof compartment of the factory or shop which shall be approved of by the inspector. Storage of
coal oil, etc.

(2) The Lieutenant-Governor in Council may add to the articles mentioned in subsection 1 any flammable or combustible material to which he deems it expedient that the provisions of subsection 1 should apply, and he may also prescribe the maximum quantity of any of the articles mentioned in subsection 1 or in the regulations which may at any time be in actual use in the factory or shop. Other in-
flammable
material and
maximum
dealt with by
regulations.

(3) A factory or shop in which a contravention of this section or of any regulations made thereunder occurs shall be deemed to be kept so that the safety of the persons employed therein is endangered. R.S.O. 1937, c. 194, s. 54. Contra-
vention.

56.—(1) Regulations may be made by the Lieutenant-Governor in Council for the protection of persons engaged in any industrial process involving the use or manufacture of benzol, or of any other poisons, or of any dangerous or harmful substances, or of their preparations or compounds, Regulations
re benzol,
etc.

- (a) prescribing the conditions under which such poisons or substances may be used or manufactured and the labelling of the containers;

- (b) respecting the posting of printed forms setting forth the dangers and safety precautions;
- (c) requiring manufacturers, distributors and others to provide accurate information regarding the percentage of poisonous, dangerous or harmful constituents;
- (d) providing for the periodic medical examination by qualified physicians of employees engaged in such industrial processes and the reports to be made of such examinations;
- (e) respecting the payment of fees for medical examinations;
- (f) respecting the reporting of cases of affection from dangerous or harmful substances or industrial poisoning by employers, doctors and others;
- (g) generally, governing such other matters as may be deemed advisable for the protection of such persons.

Contraven-
tion.

(2) A factory or shop in which a contravention of this section or of any regulations made thereunder occurs shall be deemed to be kept so that the safety of the persons employed therein is endangered. R.S.O. 1937, c. 194, s. 55.

Boiler
insurance
and
inspection.

57.—(1) The owner or user of a boiler or other pressure vessel in a factory, shop, bakeshop, restaurant or office building or in any other building on any other premises or in any other place or in a highway or in any other public place shall not operate or use the same unless it is insured in some boiler insurance company registered in the Department of Insurance or has been inspected and reported safe to operate within the calendar year by some person authorized by the regulations under subsection 5.

Returns
of boiler
insurance
companies.

(2) Every such boiler insurance company shall annually on the 30th day of November, transmit to the Chief Inspector, a report of the boilers and other pressure vessels in Ontario insured by it, and when the insurance is cancelled the company shall forthwith give notice thereof to the Chief Inspector.

Discon-
tinuing
use when
dangerous.

(3) Whenever the inspector is of opinion that a boiler or other pressure vessel is in such position, or is so located or operated as to be dangerous to life or property he may, by written notice to the owner and employer, and to the person operating or using such boiler or other pressure vessel, direct

that the use of the boiler or other pressure vessel shall be discontinued until it has been inspected as provided in subsection 1 and a certificate has been given by the inspector that the boiler or other pressure vessel may be safely operated.

(4) A factory, shop, bakeshop, restaurant or office building in which a boiler or other pressure vessel is used in contravention of this section, after such notice from the inspector and before a certificate has been given as provided in subsection 3 shall be deemed to be kept so that the safety of the persons employed in the factory, shop, bakeshop, restaurant or office building is in danger. R.S.O. 1937, c. 194, s. 56 (1-4). Effect of non-compliance.

(5) Subject to the approval of the Lieutenant-Governor in Council, the Minister may make regulations, Regulations as to inspectors.

- (a) prescribing the qualifications of persons to act as inspectors under subsection 1;
- (b) respecting the examination of candidates and the granting of certificates and the evidence to be furnished by the candidates as to previous training and experience and as to sobriety and good character;
- (c) determining the periods for which the certificates shall be granted and the terms upon which they may be renewed;
- (d) fixing the fees to be paid by candidates upon examination and for certificates and renewals;
- (e) prescribing the causes for which a certificate may be revoked, cancelled or suspended;
- (f) fixing the fees or other remuneration to be paid by the owner of a boiler or pressure vessel to an inspector upon inspection;
- (g) assigning the district or locality in which any inspector is to act;
- (h) prescribing the nature of reports of inspection of uninsured boilers and other pressure vessels and the conditions under which such are to be made. R.S.O. 1937, c. 194, s. 56 (5); 1944, c. 19, s. 14; 1949, c. 95, s. 6 (2).

(6) Nothing in subsection 5 shall apply to the inspection of any boiler or other pressure vessel which is insured as provided in subsection 1. Exception as to insured boilers.

Certain
boilers
excepted.

(7) Nothing in this section shall apply to a boiler or other pressure vessel,

- (a) used for heating purposes in a dwelling house, not being part of an apartment house; or
- (b) used on a farm for agricultural purposes only; or
- (c) used in connection with any hot water heating system of the open type. R.S.O. 1937, c. 194, s. 56 (6, 7).

Elevators
and hoists;
safety
requirements.

58.—(1) In every factory, shop, bakeshop, restaurant and office building,

- (a) every elevator shall be equipped with devices approved by the inspector,
 - (i) which will stop and hold the elevator car in case the elevator or any machinery or appliance connected therewith fails to function,
 - (ii) which will prevent the elevator car from over-running its safe limits of travel, and
 - (iii) for signalling the elevator operator from each floor or landing;
- (b) the openings of the hoistway, hatchway and wellhole used for every elevator shall, at each floor or landing, including the basement, be protected by doors or gates approved by the inspector, which shall extend to the floor or landing, and which in the case of hand power elevators shall be not less than three feet in height, and in the case of all other elevators shall be not less than five feet, six inches in height, or by self-closing hatches or trap-doors approved by the inspector.
- (c) every gate or door opening on to an elevator hoistway shall be connected to the machinery operating the elevator by an interlocking device which shall prevent the elevator car from moving until such gate or door is closed, and which shall prevent such gate or door from being opened unless the elevator car is in the proper position in relation to such gate or door to permit the safe movement of passengers or freight from the landing or floor to the platform of the elevator car;

- (d) a sign bearing the word "Danger" in letters not less than four inches in height shall be affixed to or stencilled on,
 - (i) the bottom rail of every gate opening into an elevator shaft, which is opened by being raised, and
 - (ii) in a conspicuous position on every other door or gate opening into an elevator shaft where the inspector so requires;
- (e) the sides of elevator hoistways on all floors or landings, including the basement, not guarded by doors or gates, shall be fully enclosed in a manner approved by the inspector;
- (f) where an elevator is enclosed in a tower having walls over six inches thick it may be provided with an extra operating rope outside the tower;
- (g) every operating rope shall be provided with a lock approved by the inspector to secure it;
- (h) projections which extend inwards from the hoistway, and which are opposite the entrance to the elevator car, shall be bevelled on the underside, or shall be guarded by smooth metal or wooden plates and the angle of the bevels or plates shall not be less than sixty, nor more than seventy-five degrees from the horizontal, and shall be finished in a manner approved by the inspector; and
- (i) the top of every elevator car shall be provided with a guard approved by the inspector.

(2) Unless equipped with a brake or other device for stopping the belt and with an automatic device for stopping it at the top of its safe limit of travel, an elevator or hoist constructed upon the principle of an endless belt or any similar contrivance shall not be used for carrying passengers, goods or freight, but this shall not apply to an escalator or other like contrivance which is not perpendicular, when such contrivance is supplied with handrails at the sides and is not otherwise enclosed and the inspector has certified that it is so constructed that it may be operated without danger to persons using it. Certain kinds of hoists not to be used.

(3) The rate of speed of an endless belt or any similar contrivance shall not exceed the rate of seventy-five feet per minute. Speed.

Rights of
municipal
councils
preserved.
Rev. Stat.,
c. 243.

(4) Nothing in this section shall take away or interfere with the powers possessed by municipal councils under *The Municipal Act* in respect of hoists or elevators.

Where
inspector
deems
elevator
dangerous.

(5) Where the inspector deems that any elevator or hoist or any part thereof is a source of danger to the safety of persons using it, he shall give notice thereof in writing to the owner or employer, directing that the elevator or hoist or any part thereof be rendered in a safe working condition within a period of thirty days, or such period as the inspector deems necessary, and upon failure to comply with the inspector's orders within the specified time, the use of the elevator or hoist shall be discontinued forthwith until the inspector's orders have been complied with.

Penalty.

(6) Every owner or employer who fails to comply with any of the provisions of this section or the regulations shall be guilty of an offence and liable to a penalty of not less than \$50 and not more than \$500, and in default of payment shall be liable to imprisonment for a term of not more than twelve months.

Regulations
re elevators.

(7) The Lieutenant-Governor in Council may make regulations with respect to the use, construction, maintenance, operation and inspection, including the collection of fees for inspection, of elevators or hoists.

Age of
operator.

(8) Every elevator shall be operated by and under the control of a competent elevator operator, who shall not be under the age of eighteen years.

Application
of section.

(9) This section shall apply to every factory, shop, bakeshop, restaurant and office building. 1942, c. 17, s. 3.

Fire
prevention
and
protection.

59.—(1) In every factory, shop, bakeshop, restaurant and office building,

- (a) the owner or employer shall provide such equipment, facilities and other means for the prevention and extinguishment of and protection from fire as the Chief Inspector may deem necessary in the circumstances and direct such owner or employer in writing to provide; and
- (b) the owner shall provide such means of egress convenient to and having easy communication with all working rooms as the Chief Inspector may deem necessary including,
 - (i) such tower stairways of fire resistive construction equipped with fire doors approved by the Chief

Inspector at each storey including the basement, as the Chief Inspector may direct,

- (ii) such metal or other non-flammable fire escapes consisting of stairways, with railings, attached to the outside of the building and with landings at each storey connecting directly with the interior of the building through metal or other fire resistive doors or casement windows, as the Chief Inspector may direct, and
- (iii) such lighting facilities and legible signs to facilitate egress as the Chief Inspector may direct.

(2) In every factory, shop, bakeshop, restaurant or office building in which more than fifteen persons are employed at any time during the year or in which, in the opinion of the inspector the nature of the business carried on may endanger the safety of the employees, every door for the use of the employees shall open outwardly and no door leading to the outside or to any passageway, tower stairway or fire escape shall be obstructed, bolted, barred or locked during any time that employees are in the building. 1944, c. 19, s. 15. Doors to open outwardly.

(3) No outside fire escape shall extend above the fifth floor of any factory, shop, restaurant or office building, and the ground floor shall be considered the first floor. Extent of outside fire escapes.

(4) The Lieutenant-Governor in Council may make regulations for the more effectual carrying out of the provisions of this section and for the adoption of any system of fire escape in substitution for those above mentioned. Regulations.

(5) The owner or proprietor of any factory, shop, restaurant or office building refusing or neglecting to provide the means of safe exit in case of fire prescribed in this section, or by the regulations made thereunder, shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$200 and in default of immediate payment of the same shall be liable to imprisonment for a term of not more than twelve months. Penalty for contravention.

(6) A factory, shop, restaurant or office building in which a contravention of this section, or of any regulation made thereunder occurs, shall be deemed to be kept so that the safety of persons employed therein is endangered. R.S.O. 1937, c. 194, s. 58 (4-7). Contravention.

Notice of
accident to
be given to
inspector.

60. Where a fire, accident or industrial disease in any factory, shop, bakeshop, restaurant or office building occasions any bodily injury to any person employed therein whereby he is prevented from working for more than six days, a notice in the prescribed form shall be sent to the Chief Inspector by the employer forthwith after the expiration of such six days, and if such notice is not so sent the employer shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$30. R.S.O. 1937, c. 194, s. 59; 1944, c. 19, s. 16.

Notice of
explosion.

61. Where an explosion occurs in a factory, shop, bakeshop, restaurant or office building, whether any person is injured thereby or not, the fact of such explosion having occurred shall be reported to the Chief Inspector in writing by the employer in the prescribed form within twenty-four hours next after the explosion takes place, and if such notice is not so sent the employer shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$30. R.S.O. 1937, c. 194, s. 60.

Notification
of death or
fatal injury.

62. Where in a factory, shop, bakeshop, restaurant or office building any person is killed from any cause, or is injured from any cause in a manner likely to prove fatal, written notice of the accident in the prescribed form shall be sent to the Chief Inspector within twenty-four hours after the occurrence thereof and if such notice is not so sent the employer shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$30. R.S.O. 1937, c. 194, s. 61.

Bakeshops;
Construction,
lighting,
heating,
ventilation
and
drainage.

63. Every bakeshop shall be constructed and maintained as to lighting, heating, ventilation and drainage in such a manner as not to be dangerous or injurious to the health of any person working therein, and shall be kept at all times in a clean and sanitary condition, and so as to secure the manufacture and preservation of all food products and materials therein in a good and wholesome condition. R.S.O. 1937, c. 194, s. 62.

Washroom,
towels, soap
and closet.

64.—(1) Every bakeshop which is not within the provisions of this Part relating to factories or shops shall be provided with a proper washroom and a sufficient supply of clean towels and soap, and a closet and other conveniences for the health and comfort of the persons employed therein.

Situation of
washroom
and closet.

(2) The washroom, closet and other conveniences shall be separate from the bakeshop and shall be kept clean and in a sanitary condition. R.S.O. 1937, c. 194, s. 63.

65.—(1) No bakeshop shall be kept in any basement or in any part of a building which is below the level of the street or road upon which the bakeshop is situate. No bakeshop to be in basement.

(2) This section shall not apply to any bakeshop established before the 6th day of May, 1913. Application. R.S.O. 1937, c. 194, s. 64.

66. The sleeping places of the employees of every bakeshop shall be separate from the bakeshop, and no person shall sleep in a bakeshop. Sleeping places to be separate. R.S.O. 1937, c. 194, s. 65.

67. Subsection 5 of section 41 and section 70 shall apply to every bakeshop whether the same is or is not a factory or shop within the provisions of this Part relating to factories and shops. Health and hours of labour. R.S.O. 1937, c. 194, s. 66.

68. Every bakeshop, not being a factory or shop to which section 59 applies, shall be provided with proper means and facilities of escape in case of fire to the satisfaction of the inspector. Fire escapes. R.S.O. 1937, c. 194, s. 67.

69. No person shall sell, expose or offer for sale bread or buns manufactured out of Ontario without the written permission of an inspector. Sale of bread, etc., manufactured out of Ontario. R.S.O. 1937, c. 194, s. 68.

70.—(1) Except with the written permission of the inspector, no person shall require, permit or suffer adult male employees to work in any bakeshop for more than fifty-six hours in any calendar week and a copy of such permission shall be posted up in a conspicuous place in the bakeshop, provided, however, that permission shall not be required for overtime work on the Friday of any week where a statutory or civic holiday occurs on the following Monday. Hours of labour in bakeshops.

(2) No person shall require, permit or suffer any adult male employee to work in any bakeshop on Sunday between the hours of seven o'clock in the forenoon and one o'clock in the afternoon except for the purpose of performing preliminary work, including kindling of fires, fermentation process, preparation of doughs and sponges necessary for the scaling and baking of bread. Hours of work on Sunday.

(3) Subsection 2 shall not apply to employees whose daily period of employment does not exceed eight hours between seven o'clock in the forenoon and six o'clock in the afternoon and who regularly receive at least twenty-four consecutive hours rest period during each calendar week. Exceptions as to Sunday work.

Hours of rest. (4) Every employee who works for more than nine hours during any one work period or during any twenty-four consecutive hours, except in any case covered by a special permit, shall be given at least twenty-four consecutive hours rest period before commencing the next daily work period. R.S.O. 1937, c. 194, s. 69.

OFFENCES AND PENALTIES

Premises dangerous to health or safety.

71.—(1) No person shall keep a factory, shop, bakeshop, restaurant or office building so that the safety of persons employed therein is endangered, or so that the health of the persons employed therein is likely to be injured, and every person who so keeps a factory, shop, bakeshop, restaurant or office building shall be guilty of an offence and liable to a penalty of not less than \$50 and not more than \$500 or may be imprisoned in the common jail of the county within which the offence was committed for a term of not more than twelve months. R.S.O. 1937, c. 194, s. 70 (1); 1942, c. 17, s. 4.

Penalty.

Enumeration not to affect generality.

(2) The enumeration in this Part of cases in which it is declared that where an act or omission occurs a factory, shop, bakeshop, restaurant or office building shall be deemed to be kept so that the safety of the persons employed therein is endangered shall not restrict or limit the generality of the provisions of subsection 1. R.S.O. 1937, c. 194, s. 70 (2).

False entries, etc.

72. Every person who wilfully makes a false entry in any register, notice, certificate or document required by this Part or the regulations made under this Part, to be kept or served or sent, or who wilfully makes or signs a false declaration under this Act, or who knowingly makes use of any such false entry or declaration, shall be guilty of an offence and liable to a penalty of not less than \$50 and not more than \$300 and in default of immediate payment of such penalty shall be liable to imprisonment for a term of not more than six months. R.S.O. 1937, c. 194, s. 71.

Parents liable to penalty.

73. The parent of any youth or young girl employed in contravention of this Part, unless such employment is without the consent, connivance or wilful default of such parent shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$50 for each offence. R.S.O. 1937, c. 194, s. 72.

Penalty for contravention where no express penalty provided.

74. If any of the provisions of this Part, or of the regulations, or any directions of the inspector are contravened and no other penalty is herein provided for such contravention the offender shall be guilty of an offence and liable to a penalty of not less than \$10 and not more than \$50. R.S.O. 1937, c. 194, s. 73.

75. Where a youth or young girl is, in the opinion of the magistrate or justice, apparently of the age alleged by the informant it shall lie on the person charged to prove that the youth or young girl is not of that age. R.S.O. 1937, c. 194, s. 74.

76. Where an offence for which an employer is liable under this Part has in fact been committed by some agent, servant, workman or other person such agent, servant, workman or other person shall also be liable to the same penalty or punishment for such offence as if he were the employer. R.S.O. 1937, c. 194, s. 75.

77. Where the employer is charged with an offence against this Part he shall be entitled, upon information duly laid by him, to have any other person whom he alleges to be the actual offender brought before the magistrate or justice at the time appointed for hearing the charge, and if after the commission of the offence has been proved, the employer proves to the satisfaction of the magistrate or justice that he had used due diligence to enforce the execution of this Part, and that such other person had committed the offence without the knowledge, consent or connivance of the employer such other person may be summarily convicted of such offence and the employer shall be exempt from any penalty or punishment. R.S.O. 1937, c. 194, s. 76.

78. Where it appears to the satisfaction of the inspector that an employer used all due diligence to enforce the execution of this Part, and also by what person an offence against this Part was committed, and that it was committed without the knowledge, consent or connivance of the employer and in contravention of his orders the inspector shall proceed against the person whom he believes to be the actual offender in the first instance and not against the employer, and in case of his conviction the employer shall be exempt from any penalty or punishment. R.S.O. 1937, c. 194, s. 77.

79. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger penalty or punishment than the highest penalty or punishment fixed by this Part for the offence except where,

- (a) the repetition of the offence occurs after an information has been laid for the previous offence; or
- (b) the offence is one of employing two or more youths, young girls or women contrary to this Part. R.S.O. 1937, c. 194, s. 78.

Recovery of penalties.

Rev. Stat., c. 379.

80.—(1) Save where otherwise provided, the penalties imposed by or under this Act shall be recoverable under *The Summary Convictions Act*.

Limitation of prosecutions.

(2) The information shall be laid within two months, or where the offence is punishable at discretion, by imprisonment within three months, after the offence has come to the knowledge of the inspector, or where the inspector has given notice to the offender to remedy the matter which is alleged to be an offence against this Part, within three months after the expiry of the time given by the notice to remedy the same.

Sufficiency of allegation.

(3) It shall be sufficient to allege that a factory, shop, bake-shop, restaurant or office building is a factory, shop, bakeshop, restaurant or office building within the meaning of this Part.

Statement as to name of employer.

(4) It shall be sufficient to state the name of the ostensible employer or the firm name by which the employer is usually known. R.S.O. 1937, c. 194, s. 79.

Minimum penalty.

81. Whenever in this Act it is provided that a penalty may be imposed for an offence against this Act and no minimum penalty is prescribed, no less penalty shall be imposed upon conviction of the offence than an amount equivalent to one-tenth of the maximum penalty, and in no case less than \$10. R.S.O. 1937, c. 194, s. 80.

Limitation of liability in certain cases.

Rev. Stat., c. 430.

82. In all cases between employer and employed or their representatives where liability for damages arises by reason of any violation of this Part the liability shall be subject to the limitations contained in *The Workmen's Compensation Act*. R.S.O. 1937, c. 194, s. 81.

PART II

MUNICIPAL BY-LAWS AS TO CLOSING OF SHOPS

Interpretation.

83.—(1) In this section and in any by-law passed thereunder,

(a) "closed" means not open for the serving of any customer;

(b) "shop" means a building or portion of a building, booth, stall or place where goods are exposed or offered for sale by retail, and barbers' shops, beauty parlours, shoe repair shops, shoe shine shops and hat cleaning and blocking businesses but does not include a place where the only trade or business carried on is

that of a licensed hotel or tavern, victualling house or refreshment house. R.S.O. 1937, c. 194, s. 82 (1); 1944, c. 19, s. 17.

(2) Nothing in this section or in any by-law passed under the authority thereof shall render unlawful the continuance in a shop after the hour appointed for the closing thereof, of any customers who were in the shop immediately before that hour, or the serving of such customers during their continuance therein. R.S.O. 1937, c. 194, s. 82 (2). Exception as to customers entering before closing hour.

(3) The council of a city, town or village may by by-law require that during the whole or any part or parts of the year all or any class or classes of shops within the municipality shall be closed, and remain closed on each or any day of the week at and during any time or hours between six of the clock in the afternoon of any day and five of the clock in the forenoon of the next following day. R.S.O. 1937, c. 194, s. 82 (3); 1939, c. 47, s. 10 (2); 1942, c. 17, s. 5. By law determining hours of closing.

(4) If an application is presented to such council praying for the passing of a by-law requiring the closing of any class of shops situate within the municipality, and the council is satisfied that such application is signed by not less than three-fourths in number of the occupiers of shops within the municipality belonging to the class to which such application relates, the council shall, within one month after the presentation of such application, pass a by-law giving effect thereto and requiring all shops within the municipality belonging to the class specified in the application to be closed during the period of the year and at the times and hours mentioned in subsection 3 as are named in the application. Council to pass by-law on application of occupiers of shops.

(5) If an application is presented to the council of a city, town or village praying for the passing of a by-law requiring the closing of any class of shops situate within the municipality and the council is satisfied that such application is signed by not less than three-quarters in number of the occupiers of shops within the municipality belonging to the class to which such application relates, the council shall, within one month after the presentation of such application, pass a by-law giving effect thereto and requiring all shops within the municipality belonging to the class specified in the application to be closed and remain closed on one particular day of the week during such time or hours between twelve-thirty o'clock noon and five of the clock of the forenoon of the next following day and during such periods of the year as are named in the application. Compulsory closing of shops for weekly half-holiday.

Presentation
of applica-
tion.

(6) If the application is delivered to the clerk of the council it shall be deemed to have been presented to and received by the council.

Powers o
township
councils.

(7) The council of every township shall, with respect to any portion of such township designated in the by-law, have all the rights and powers conferred by this section on the council of a city, town or village, and may pass by-laws which shall apply only to that portion of the township so designated.

Regulations
as to form
and proof of
applications.

(8) The council may by by-law make regulations as to the form of the application and as to the evidence to be produced respecting the proportion of persons signing the same and as to the classification of shops for the purposes of this section, and it shall not be compulsory upon the council to pass such by-law unless and until all such regulations have been duly observed.

Commence-
ment and
publication
of by-laws.

(9) Every such by-law shall take effect at a date named therein, being not less than one nor more than two weeks after the passing thereof, and shall before that date be published in such manner as to the council passing the by-law may appear best fitted to insure the publicity thereof.

Conditions
of repeal.

(10) A council shall not repeal a by-law passed pursuant to subsection 4 except as provided in subsection 11.

Idem.

(11) If at any time it is made to appear to the satisfaction of the council that more than one-third in number of the occupiers of shops to which any by-law passed by the council under the authority of subsection 4 relates, or of any class of such shops, are opposed to the continuance of such by-law the council may repeal the by-law, or may repeal the same in so far as it affects such class, but any such repeal shall not affect the power of the council to thereafter pass another by-law under any of the provisions of this section.

Closing of
shops in
which several
trades are
carried on.

(12) A shop in which trades of two or more classes are carried on shall be closed for the purpose of all such trades during the hours in which it is by any such by-law required to be closed for the purpose of that one of such trades which is the principal trade carried on in such shop.

Exception
as to sales by
druggists.

(13) A pharmaceutical chemist or druggist shall not, nor shall any occupier of, or person employed in or about a shop in any village or township be liable to any penalty or punishment under any such by-law for supplying medicines, drugs or medical appliances after the hour appointed by such by-law for the closing of shops, but nothing in this subsection shall authorize any person to keep open shop after that hour.

(14) Nothing in any such by-law shall render the occupier of any premises liable to any penalty or punishment for supplying any article to any person lodging in such premises, or for supplying any article required for immediate use by reason of any emergency arising from sickness, ailment or death, or for supplying or selling any article to any person for use on or in or about or with respect to any steamboat or sailing vessel which at the time of such supplying or selling is either within or in the immediate neighbourhood of the municipality in which the premises are situate, or for use by or with respect to any person employed or engaged on or being a passenger on or by any such steamboat or sailing vessel, but nothing in this subsection shall authorize any person to keep open shop after the hour appointed by such by-law for the closing of shops.

Supplying articles to lodgers, etc.

(15) A by-law passed by the council of a township for the closing of all or any class or classes of shops may as to any or all of its terms and provisions, differ from any other by-law passed by the same council for the closing of all or any class or classes of shops in any other designated part of the same township.

By-laws containing different provisions for different localities.

(16) Notwithstanding that the occupiers of any class of shops required to be closed by a by-law passed under subsection 4 may not have presented an application for the passing of such by-law, every such by-law shall, nevertheless, be valid and effectual as respects any other, and the occupiers of any other class of shops thereby required to be closed in conformity with any application in that behalf made or presented to the council by the prescribed number of occupiers of such last mentioned class.

By-laws invalid as to one class may be good as to others.

(17) The onus of proving that an application in compliance with subsection 4 was not presented by the prescribed number of the occupiers of any class of shops shall be upon the person asserting that such application was not so presented.

Burden of proof.

(18) Where an offence for which the occupier of a shop is liable under any such by-law to any penalty or punishment has in fact been committed by some agent or servant of the occupier, such agent or servant shall be liable to the same penalty or punishment as if he were the occupier.

Agent or servant to be liable to penalty.

(19) Where the occupier of a shop is charged with an offence against any such by-law he shall be entitled, upon information duly laid by him, to have any other person whom he alleges to be the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the

Exemption of occupier on conviction of actual offender.

occupier proves to the satisfaction of the court that he has used due diligence to enforce the execution of the provisions of the by-law, and that such other person committed the offence without his knowledge, consent or connivance, such other person may be summarily convicted of such offence and shall be liable to the same penalty or punishment as if he were the occupier, and the occupier shall be exempt from any penalty or punishment.

Rev. Stat.,
c. 243 to
apply.

(20) The provisions of *The Municipal Act* as to the penalties which may be imposed for contravention of by-laws and the recovery thereof shall apply to by-laws passed under this section. R.S.O. 1937, c. 194, s. 82 (4-20).

Retail
gasoline
outlets.

Rev. Stat.,
c. 179.

84. In addition to any matter authorized by section 83, any by-law thereunder applicable to retail gasoline service stations, gasoline pumps and outlets in the retail gasoline service industry as defined in *The Industrial Standards Act* may,

- (a) provide that the by-law shall apply only in the portion or portions of the municipality designated in the by-law;
- (b) require that during the whole or any part or parts of the year such retail gasoline service stations, gasoline pumps and outlets be closed and remain closed at and during any time or hours between six of the clock in the afternoon of any day and seven of the clock in the forenoon of the next following day and between six of the clock in the afternoon of Saturday and seven of the clock in the forenoon of the next following Monday; and
- (c) provide for the issuing of permits authorizing the retail gasoline service station, gasoline pump or outlet for which it is issued to be and remain open, notwithstanding the by-law, during the part or parts of the day or days specified in the permit. 1948, c. 27, s. 2.

"hotel",
meaning of.

85.—(1) In this section, "hotel" means a separate building or two or more connected buildings used mainly for the purpose of catering to the needs of the travelling public by the supply of food and also by the furnishing of sleeping accommodation of not less than six bedrooms as distinguished from any other building or connected buildings used mainly for the purpose of supplying food and lodging by the week or otherwise commonly known as "boarding houses" or of

furnishing living quarters for families and having a dining-room or restaurant commonly known as "apartment houses" or "private hotels."

(2) For the purposes of the sale of non-intoxicating drinks and beverages, cigars, cigarettes and tobacco and the conduct of any ice-cream parlour, restaurant or cafe, the keeper of an hotel shall not be required, Sale of non-intoxicating drinks, etc.

(a) to obtain any licence issued by a municipal authority;
or

(b) to comply with any by-law relating to early closing.
1946, c. 27, s. 2.

CHAPTER 127

The Farm Loans Act

1. In this Act,

Interpretation.

- (a) "association" means farm loan association incorporated under this Act;
- (b) "Commissioner" means Commissioner of Agricultural Loans;
- (c) "directors" means directors of a farm loan association;
- (d) "local municipality" means township or village;
- (e) "Treasurer" means Treasurer of Ontario;
- (f) "secretary-treasurer" means secretary-treasurer of a farm loan association. R.S.O. 1937, c. 79, s. 1; 1949, c. 2, s. 3 (2), *amended*.

2. A farm loan association may be formed for the purpose of loaning money under this Act in any part of Ontario described in the certificate of incorporation. R.S.O. 1937, c. 79, s. 2. Farm loan association.

3. Where it is desired to form such an association, an application in such form as may be prescribed by the regulations and describing the territory for which the association is to be formed shall be forwarded to the Commissioner at Toronto. R.S.O. 1937, c. 79, s. 3. Application.

4.—(1) The Commissioner shall name a person to act temporarily as secretary-treasurer of the proposed association, and shall instruct the secretary-treasurer to call a meeting of those interested. Temporary secretary-treasurer.

(2) At such meetings five provisional directors shall be elected, and the work of organization shall be completed under their direction. R.S.O. 1937, c. 79, s. 4. Provisional directors.

5. Any person resident in the territory described in the application and actually engaged in farming operations, or agreeing to become so engaged within one year, shall be eligible for membership. R.S.O. 1937, c. 79, s. 5. Persons eligible for membership.

Certificate
of incor-
poration.

6. No association shall be deemed to be incorporated until a certificate of incorporation setting forth that all the terms of this Act have been complied with has been issued by the Commissioner as hereinafter provided. R.S.O. 1937, c. 79, s. 6.

Capital
stock.

7.—(1) The amount of the capital stock of the association shall be fixed by the Commissioner and shall be made up as follows:

- (a) One share of par value of \$100 to be subscribed by each member.
- (b) Shares of par value of \$100 to the extent of one-half of the total amount subscribed by individual members subscribed for by the corporations of local municipalities in the territory for which the association is formed.
- (c) Shares of par value of \$100 each to the extent of one-half of the total amount subscribed by individual members subscribed for by the Province of Ontario.

Minimum
number of
members.

(2) No association shall be incorporated or carry on business until at least 30 members have subscribed for stock in the association. R.S.O. 1937, c. 79, s. 7.

Terms of
payments.

8. Each member shall pay 10 per cent of the par value of his stock at the time of subscription and the balance when called upon, and payments by municipal corporations and the Province shall be made at the same time and in the same proportions as those of individual members. R.S.O. 1937, c. 79, s. 8.

Council of
local
municipality
may sub-
scribe.

9. The council of any local municipality may in its discretion by by-law subscribe to the stock of any association incorporated under this Act to the extent and upon the terms herein provided, and may pay for the stock subscribed for and take all steps incidental thereto and to the carrying out of the provisions of this Act and may issue debentures of the corporation payable within a period not exceeding 10 years, for the amount of such subscription in the manner provided by *The Municipal Act*, but it shall not be necessary to submit any by-law for the issue of such debentures to the electors qualified to vote on money by-laws nor to observe the other formalities in relation thereto prescribed by *The Municipal Act*. R.S.O. 1937, c. 79, s. 9.

Rev. Stat.,
c. 243.

10. In the event of two or more municipalities combining in such subscription, the stock held by them may be held in the joint names of the corporations or severally in such proportions as they may agree upon, and may be acted upon in such joint or separate manner as they may from time to time agree upon. R.S.O. 1937, c. 79, s. 10.

Where two or more municipalities combine.

11. Upon receipt of a report from the Commissioner that an association is being formed in accordance with this Act, the Treasurer, with the approval of the Lieutenant-Governor in Council, may subscribe for shares in accordance with clause c of subsection 1 of section 7, and all necessary payments shall be made out of the Consolidated Revenue Fund or in bonds or other securities issued or guaranteed by the Province. R.S.O. 1937, c. 79, s. 11.

Treasurer, when may subscribe.

12.—(1) To represent the stock subscribed and to assist generally in the conduct of the business of the association, two directors shall be appointed by a municipal corporation subscribing, or if more than one municipal corporation is subscribing, one director shall be appointed by each corporation and in every case two directors shall be appointed by the Lieutenant-Governor in Council.

Appointment of directors.

(2) Directors named under this section shall serve for a period of two years or until their successors are appointed. R.S.O. 1937, c. 79, s. 12.

Directors' term of office.

13. Shares owned by members may be transferred to other members or purchased by the association only with the approval of the board of directors. R.S.O. 1937, c. 79, s. 13.

Transfer of shares to have approval of directors.

14.—(1) The secretary-treasurer shall be responsible for all moneys or securities realized by the sale of capital stock and such moneys or securities shall, where not needed for liabilities, be invested in bonds or debentures of or guaranteed by a government or municipality, as may be ordered by the directors with the approval of the Commissioner.

When moneys to be invested by secretary-treasurer.

(2) The secretary-treasurer shall give such security for the due performance of the duties of his office and for the safe custody of the moneys coming to his hands as may be prescribed by the regulations, and he shall at all times keep all moneys and securities in his hands separate from his own moneys and shall deposit the same in a chartered bank to the credit of the association. R.S.O. 1937, c. 79, s. 14.

Secretary-treasurer to give security.

Organization
of associa-
tions.

15. When capital stock has been arranged for as prescribed, the secretary-treasurer shall call a meeting of the members and the directors named by the subscribing municipality and the Province and such meeting shall select the proposed corporate name, to wit "Farm Loans Association of (*insert name*)", and shall complete the organization of the association. R.S.O. 1937, c. 79, s. 15.

Officers.

16.—(1) The subscribing members shall, at such meeting, from among themselves elect a president, vice-president and one director who, with the directors named by the municipality and the Province, shall constitute the board of directors.

Term
of office.

(2) The president, vice-president and director shall hold office for one year or until their successors are elected. R.S.O. 1937, c. 79, s. 16.

Application
for certificate
of incorpora-
tion.

17.—(1) The secretary-treasurer, immediately after the holding of the meeting, shall advise the Commissioner that organization has been completed and shall give the names of officers and directors and make application for a certificate of incorporation.

Association,
when to be
deemed
incorporated.

(2) Upon receipt of such application the Commissioner may issue a certificate of incorporation to the association in the name approved and thereupon the association shall be a body corporate and shall for all purposes be deemed to be duly incorporated and may carry on business and exercise all the powers conferred upon it by this Act.

Vacancy in
directorates.

(3) Upon a vacancy occurring among the directors, the vacancy shall be filled by the body appointing the director whose seat has become vacant.

Quorum.

(4) Two of the directors elected by the members and three of the directors appointed by the municipality and the Province shall constitute a quorum of the directors of the association. R.S.O. 1937, c. 79, s. 17.

Appointment
of secretary-
treasurer.

18. The board of directors shall be responsible for carrying on the business of the association, shall appoint a secretary-treasurer, who may or may not be a member, and shall have power to fix the duties of all officers and, subject to the regulations, make rules governing procedure at all meetings of the directors or the association and the conduct of the association generally. R.S.O. 1937, c. 79, s. 18.

19. No officer or director, except the secretary, shall be paid any salary or fee by the association, other than actual disbursements necessarily made in attending to the business of the association and approved by the directors. R.S.O. 1937, c. 79, s. 19.

Officers and directors to be paid only for disbursements.

20. An annual meeting of the association shall be held once in every year, between the 1st day of January and the 1st day of March, of which due notice shall be given by the secretary by letters addressed to each subscriber and director, and at such meeting reports shall be presented by the officers showing fully the business done by the association during the last calendar year. R.S.O. 1937, c. 79, s. 20.

Annual meeting.

21. After the incorporation of an association additional members may be admitted with the approval of the directors and under such conditions as the directors may prescribe. R.S.O. 1937, c. 79, s. 21.

Additional members, when admitted.

22. The object of an association incorporated under this Act shall be to promote individual prosperity and agricultural development by securing for members short-term loans for current expenditures. R.S.O. 1937, c. 79, s. 22.

Objects.

23. When an association desires to secure credit for its members the secretary shall advise the Commissioner, who shall inform the association as to the facilities available and the steps to be taken in furtherance of this Act. R.S.O. 1937, c. 79, s. 23.

Where association desires credit.

24.—(1) Any member of an association shall be entitled to apply for a short-term loan for any one or more of the following purposes:

Short-term loans may be made, for what purposes.

- (a) Purchase of seed, feed, fertilizer and other supplies.
- (b) Purchase of implements and machinery.
- (c) Purchase of cattle, horses, sheep, pigs and poultry.
- (d) Payment of the cost of carrying on any farming, ranching, dairying or other agricultural operations.
- (e) Payment of the cost of preparing land for cultivation.
- (f) Fire or life insurance where required, in the opinion of the directors, as collateral security for a loan made for any of the above-mentioned purposes.

Limit of
amount of
loan.

(2) No loan to any member shall exceed in amount \$2,000 but an additional loan or loans may be made to a member of an association provided that the total amount of indebtedness outstanding on account of any member shall not at any time exceed \$2,000. R.S.O. 1937, c. 79, s. 24.

Application
for loan,
what to
include.

25. Any member of an association desiring a loan shall sign an application in the form prescribed, stating the amount required and the purpose for which it is to be used, and agreeing to repay the loan at a date therein to be named, which shall not be later than the 31st day of December next thereafter, together with interest at the rates fixed in accordance with this Act. R.S.O. 1937, c. 79, s. 25.

Approval of
directors.

26. All such applications shall be delivered to the secretary and shall be presented by him to the directors at the next following meeting, and the directors shall determine whether any application shall be approved, and may approve the same in part or on such terms as they may deem proper, and may demand such security from the applicant as they may think necessary, and in the event of the application being approved in part only or being varied, a new application shall be signed by the applicant in accordance with the approval and the former application cancelled. R.S.O. 1937, c. 79, s. 26.

Form of
approval.

27.—(1) When an application has been finally approved by the directors, such approval shall be certified on the application in the form prescribed and shall be signed by the secretary and by the president or vice-president, and a record of all applications approved shall be entered in the minutes of the association, and one duplicate or copy thereof shall be delivered to the applicant and another duplicate or copy retained by the association.

Idem.

(2) In the event of the absence from any cause of any such officers the directors may by resolution authorize any other officer to sign the approval in his stead. R.S.O. 1937, c. 79, s. 27.

Original
copy of
application
with ap-
proval to be
delivered
to bank or
person
authorized
by directors.

28. Whenever an application has been duly made and approved, the secretary shall deliver the original thereof to such bank or person as the directors shall have authorized, and shall settle the times and conditions at and upon which the amount shall be advanced, and, upon the same being agreed to by the lender, shall advise the applicant and shall enter a record thereof in the books of the association. R.S.O. 1937, c. 79, s. 28.

29. Before any moneys are advanced in pursuance of an approved application, the lender or association may require the borrower to sign a note or notes for the amount of the moneys to be advanced, and the association shall endorse such note or notes, but the terms of such notes shall not vary in any way from the terms of the approved application or from the provisions of this Act, and the secretary is hereby authorized to endorse such notes on behalf of the association. R.S.O. 1937, c. 79, s. 29.

Note may be required.

30. The rate of interest payable by a borrower on a loan guaranteed by an association shall not exceed seven per cent per annum, and out of the interest paid one-seventh shall be paid to the association for the purposes hereinafter mentioned, which share of interest shall be paid by the lender to the association as soon as the loan and all interest thereon has been received by him and the security given to the lender shall not be surrendered until all such interest charges have been paid. R.S.O. 1937, c. 79, s. 30.

Interest.

31. In the event of a borrower not being able to repay the amount of his loan on or before the 31st day of December for reasons which appear to the directors to be justifiable, or on account of the loan having been granted for purposes not productive within one year, the directors may, on the application of the borrower, authorize a renewal of any portion of the loan until such further time as may be agreed, but not later than one year next after the maturity of the previous loan, and the application for such renewal loan shall be in the same form as for any original loan, except that it shall be stamped with the word "Renewal", and shall be kept distinct from any new application made by the same borrower, but in all other respects the provisions of this Act relating to applications and the endorsements thereof, and the rights and liabilities arising thereunder, shall be applicable to such renewals. R.S.O. 1937, c. 79, s. 31.

Renewal.

32.—(1) In the event of a borrower failing to pay the amount of his loan, or renew the same within one month from the due date, the lender may demand payment of the amount owing, with interest thereon to date of payment, and the association shall within 15 days from the receipt of such demand provide for the payment of such amount.

Failure of borrower to make payments.

(2) If on the expiry of the 15 days payment has not been made to the lender the balance unpaid on the subscriptions of the several members, the municipal corporation and the Province shall forthwith become due and payable, and the liability of the municipal corporation and of the Province respectively to make payment thereof to

Where payment not made.

the amount of such demand shall not be contingent upon payment by the members or any of them.

Where
payment
made.

(3) Upon payment the lender shall deliver to the association all securities held by him for the loan or any part thereof, and the association shall be entitled to recover the amount so paid from the borrower by any means authorized by this Act or by any other statute or law applicable thereto. R.S.O. 1937, c. 79, s. 32.

Monthly
return.

33. Every lender from whom loans are obtained by any association under this Act shall forward to the Commissioner a monthly return showing each loan made by it under this Act, and the amount advanced at the date of such return and also showing all loans, if any, then past due. R.S.O. 1937, c. 79, s. 33.

Security;
goods
purchased
to be
subject
to lien.

34. All animals, machinery, goods or personal property of any kind purchased or partly purchased with the proceeds of a loan obtained under this Act, or for the purchase of which a loan has been granted, together with the offspring of such animals and the crops or other products grown upon any lands for the working of which such loan has been made or used, shall be subject to a lien for the amount of the loan in favour of the association approving without any further writing or act by the borrower, and none of the said property shall be removed from the premises of the borrower or beyond the limits of the district in which the association is authorized to carry on business, during the currency of such loan, without the consent of the secretary, except for the purpose of sale, and all proceeds of the sale of any of such property shall without delay be paid to the lender on account of the loan. R.S.O. 1937, c. 79, s. 34.

Additional
security.

35.—(1) The directors may, before granting any application, require such further security as they may think necessary, and upon such terms and conditions as they may approve.

Form and
assignment
of security.

(2) The directors are hereby authorized to take in the name of the association any form of security and to exercise all rights thereunder, and may assign such security, with all rights appertaining thereto, to the lender.

Powers
interpreted.

(3) The powers of the directors as to taking security in the name of the association includes the power to take, by way of additional security, mortgages on real or personal property or assignments of agreements of sale thereof, and to exercise all rights conferred by such securities. R.S.O. 1937, c. 79, s. 35.

36.—(1) The association shall have a lien or charge on all the personal property of the borrower for securing repayment of any such loan, upon filing a certificate of the secretary of the association in the office of the clerk of the county or district court of the county or district in which is situated the land upon which the borrower carries on the operations for which the loan was made to him, showing the amount of the loan and the name and address of the borrower.

When association may have lien on personal property of borrower.

(2) The certificate shall be registered within five days from the date thereof and shall have effect only from the date of registration.

Registration of certificate.

(3) The registration in the same office of a subsequent certificate signed by the secretary of the association, showing repayment of such loan, shall operate as a discharge of such lien.

Discharge of lien.

(4) The clerk of the county or district court shall register the certificate and discharge without the payment of any fee therefor. R.S.O. 1937, c. 79, s. 36.

No charge for registration of certificate and discharge.

37. The bank or person making a loan, or a representative, and the association endorsing a loan, or any officer or director thereof, shall have the right at any time during the currency of the loan to enter on the premises of the borrower and inquire into the manner in which the borrower is carrying on such farming or other operations as are required for the proper development of the purposes for which the loan was granted, or to ascertain that the terms of the loan are being carried out, or that the security for the loan is in good condition and on the premises of the borrower in the district. R.S.O. 1937, c. 79, s. 37.

Right of entry of bank or person making loan.

38. In the event of the death, insolvency or mental illness of the borrower, or of his deserting the premises, or of his failure to carry out the purposes of the loan, the directors of the association, or any three thereof, may apply to any county court judge for an order placing the association, or any person named by it, in possession of all goods, animals or property covered by any security given under this Act, and of any or all other property, real or personal, of the borrower lying within the municipality which may be required for the proper care, use, or preservation of the security, and the judge shall have power, after such notice to the borrower as he may think reasonable, or without notice, to make an order for the purposes aforesaid and to authorize such persons as he may name to carry out such order. R.S.O. 1937, c. 79, s. 38.

Death, insolvency, or mental illness of borrower.

Disposing
of property
covered by
lien.

39. No person who has obtained a loan under this Act, any part of which remains unpaid, shall dispose of or attempt to dispose of his stock, chattels or crops otherwise than in the ordinary course of business. R.S.O. 1937, c. 79, s. 39.

Borrower
to be
personally
liable.

40. The borrower shall be personally liable for the payment of the amount of any loan granted under this Act, or any balance thereof, and for all interest charges and costs of collection thereof. R.S.O. 1937, c. 79, s. 40.

Misapplica-
tion of
funds not
to affect
security.

41. It shall not be incumbent on any person or bank making a loan under this Act to see to the due application of the moneys loaned, and the misapplication or non-application of such moneys shall not affect the security for the loan. R.S.O. 1937, c. 79, s. 41.

Directors
qualified
to act as
qualification
committee.

42. The directors of the association shall be qualified to act as a qualification committee under *The Agricultural Development Act*, and members of an association may make application through the secretary for a long-term loan under *The Agricultural Development Act*. R.S.O. 1937, c. 79, s. 42.

Rev. Stat.,
c. 10.

Books and
records to
be open to
inspection.

43. The Commissioner shall have general supervision of all associations, and all books and records of any association shall be open at all times to inspection and audit by the Commissioner or such other person as may be named by the Lieutenant-Governor in Council. R.S.O. 1937, c. 79, s. 43.

Application
of moneys.

44. The moneys received by an association from the share of interest received by it shall be applied,

- (a) in payment of the necessary expenses of the association;
- (b) in payment of a dividend on the paid-up stock of not more than six per cent per annum;
- (c) in accumulating a reserve which may, in the discretion of the directors, be invested in the same manner as the capital stock; in the event of the dissolution of any association, any accumulated reserve shall be divided amongst the subscribers in proportion to the amount of the capital stock respectively held by them. R.S.O. 1937, c. 79, s. 44.

Application
to secretary
for informa-
tion regard-
ing a
borrower.

45. Any person dealing with a borrower or a person believed to be a borrower from any association, and proposing to sell goods on credit or to lend money or make advances to such person, may apply to the secretary of the association for

information as to the advances which have been made or authorized to such person and the purposes thereof, and the secretary, on being satisfied of the *bona fides* of such request, shall furnish any information shown on the records of the association at the date of such request. R.S.O. 1937, c. 79, s. 45.

46. The directors shall hold one or more meetings in each Meetings. of the months of March and April in every year for the consideration of applications for loans, and shall hold such further meetings as may be required from time to time on the call of the president or on the written request of any three members of the board delivered to the secretary, and the directors shall also hold one or more meetings in the month of January in each year for the consideration of loans, if any, on which the full amount has not been paid prior to the 31st day of December preceding. R.S.O. 1937, c. 79, s. 46.

47. The Lieutenant-Governor in Council may make regula- Regulations. tions respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1937, c. 79, s. 47; 1946, c. 89, s. 19.

48. The Treasurer may, with the approval of the Lieu- Treasurer may loan money to associations. tenant-Governor in Council, lend money to any such association for the purpose of assisting it to carry on its business on such terms as to interest, repayment and security as may be agreed upon. R.S.O. 1937, c. 79, s. 48.

49. The Treasurer may, with the approval of the Lieu- Agreements of Treasurer with banks, etc., to secure money. tenant-Governor in Council, enter into agreements and guarantees with banks, loan companies or other corporations for securing moneys for the purposes of associations, and may make provision for such rates of interest and conditions of repayment as may seem proper. R.S.O. 1937, c. 79, s. 49.

CHAPTER 128

The Farm Loans Adjustment Act

1. In this Act,

Interpre-
tation.

- (a) "Commissioner" means Commissioner of Agricultural Loans appointed under *The Agricultural Development Act*;
- (b) "judge" means judge of a county or district court;
- (c) "loan" means loan made under *The Agricultural Development Act*, *The Farm Loans Act* or *The Northern Development Act* for farming or agricultural purposes and includes an amount owing under an agreement for sale made pursuant to any of such Acts; Rev. Stat.,
cc. 10, 127.
R.S.O. 1937,
c. 34.
- (d) "Treasurer" means Treasurer of Ontario. 1943, c. 5, s. 1.

2.—(1) Any person who is liable for the payment of a loan may make application to the Commissioner to have the loan reviewed by a judge for the purpose of obtaining any or all of the following relief, Applica-
tion for
review
of loan.

- (a) a reduction in the amount of the principal outstanding;
- (b) a reduction in the amount of the arrears of interest; and
- (c) an extension of the time for payment of the loan.

(2) Every such application shall be in the prescribed form verified under oath and shall be sent by prepaid registered post, in duplicate, to the Commissioner. 1943, c. 5, s. 2. Form of
application.

3.—(1) Within ninety days of receipt of an application under section 2, the Commissioner shall apply to a judge for an appointment for hearing and shall furnish the judge with a copy of the application and of any further material which he may deem advisable and the judge shall appoint a time and place for the hearing. Appointment
for hearing.

Copy of
appointment
for hearing
to be mailed
to appli-
cant.

(2) The Commissioner shall cause a copy of the appointment for hearing and of any material which has been furnished to the judge, to be mailed to the applicant by prepaid registered post at least thirty days before the day named for such hearing. 1943, c. 5, s. 3.

Order of
judge.

4.—(1) Upon the hearing the judge shall consider the representations of the applicant and the Commissioner and the evidence adduced and may make such order granting the relief applied for or dismissing the application as he may deem proper, having regard to,

- (a) the nature and value of the land in respect of which the loan is made and the revenue which it is capable of producing;
- (b) the amount and nature of encumbrances against the land;
- (c) the financial and domestic obligations of the applicant and the income of the applicant from all sources; and
- (d) all other relevant circumstances,

and the order of the judge shall be final, subject only to such further order as may be made on any subsequent application.

Powers
of judge.

Rev. Stat.,
c. 308.

(2) Upon the hearing and review the judge shall have all the powers which may be conferred upon a commissioner under *The Public Inquiries Act* and he may hear the submissions and evidence of such persons as he may deem advisable. 1943, c. 5, s. 4.

Subsequent
application.

5. A subsequent application in respect of any loan may be made after the expiration of a period of two years from the date of an order made upon a previous application. 1943, c. 5, s. 5.

Powers of
Treasurer.

6. Subject to the approval of the Lieutenant-Governor in Council, the Treasurer may,

- (a) prescribe the form of application for relief and such other forms as he may deem necessary;
- (b) provide for payment of the expenses of every judge to whom an application is made;
- (c) make such regulations as he may deem necessary respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1943, c. 5, s. 6.

CHAPTER 129

The Farm Products Containers Act**1. In this Act,**Interpre-
tation.

- (a) "association" means The Ontario Bee-keepers' Association or The Ontario Fruit and Vegetable Growers' Association;
- (b) "container" includes any bag, basket, box, can, crate or other receptacle used or suitable for use in the marketing of honey, fruit or vegetables;
- (c) "inspector" means inspector appointed to administer and enforce this Act;
- (d) "licence" means a licence issued under this Act;
- (e) "manufacturer" means a person engaged in the business of manufacturing or selling containers used or suitable for use in the marketing of honey, fruit or vegetables;
- (f) "Minister" means Minister of Agriculture;
- (g) "producer" means a person engaged in the production of honey, fruit or vegetables and includes a person engaged in the handling, packing, processing, shipping, transporting, purchasing or selling of honey, fruit or vegetables;
- (h) "product" means honey or any fruit or vegetable.
1949, c. 30, s. 1.

2. When the Minister receives from the association a request asking that for the purpose of defraying the expenses of the association, every producer of any product specified in the request who purchases containers therefor, be required to obtain a licence and to pay licence fees, the Minister, subject to the approval of the Lieutenant-Governor in Council, may, if he is of the opinion that the association is fairly representative of such producers, make an order,

- (a) providing for the licensing of every such producer and requiring him to pay licence fees through the

manufacturer to the association and fixing the amount of such fees and the times of payment thereof;

- (b) exempting any class of producer from the provisions of the order;
- (c) requiring every manufacturer who sells containers either directly or indirectly to producers to collect the licence fees from the producers and to pay them to the association;
- (d) prohibiting the association from using any licence fees for the retail or wholesale distribution or processing of the product; and
- (e) requiring the association and manufacturers to furnish the inspector with such information and financial statements as the inspector may request. 1949, c. 30, s. 2.

Offences and
penalties.

3. Every person who violates any of the provisions of any order of the Minister made under this Act shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$10 and not more than \$50 for a first offence and to a penalty of not less than \$50 and not more than \$200 for any subsequent offence. 1949, c. 30, s. 3.

CHAPTER 130

The Farm Products Grades and Sales Act**1. In this Act,**Interpre-
tation.

- (a) "farm product" includes dairy products, fruit, fruit products, vegetables, vegetable products, maple products, honey, tobacco and such other natural products of agriculture as the Lieutenant-Governor in Council may designate and such articles of food or drink manufactured or derived in whole or in part from any such product as the Lieutenant-Governor in Council may designate;
- (b) "grade" means grade established under this Act;
- (c) "inspector" means inspector appointed under this Act;
- (d) "Minister" means Minister of Agriculture;
- (e) "package" includes any box, crate or other receptacle used for or suitable for use in the marketing, transporting or shipping of a farm product. R.S.O. 1937, c. 307, s. 1; 1939, c. 15, s. 1; 1950, c. 19, s. 1.

2.—(1) Subject to the approval of the Lieutenant-Governor in Council, the Minister may make regulations,Regula-
tions.

- (a) establishing grades and classes for any farm product;
- (b) providing for the inspection, grading, packages and packing, marking, handling, shipping, transporting, advertising, purchasing and selling of farm products within Ontario;
- (c) prescribing the manner in which sellers, transporters and shippers of farm products shall identify, for purposes of grading, individual producer's lots in any shipment;
- (d) prescribing the manner in which shippers or packers shall make returns and prepare for presentation to the producer the statements of account of purchase of such farm products and for the investigation of

such statements and the transactions represented thereby;

- (e) prescribing the fees payable upon the inspection and grading of any farm product;
- (f) designating the places where farm products may be inspected and such highway inspection points as are considered necessary;
- (g) prescribing the powers and duties of inspectors and graders;
- (h) providing for the issue of grading certificates by inspectors and prescribing the form thereof;
- (i) providing for the exemption from this Act or the regulations, or any part thereof, of any person or group of persons;
- (j) respecting the cleanliness and sanitation of all premises in which a farm product is stored, processed, graded or packed;
- (k) providing for the issuing of licences for engaging in the marketing of farm products and for operating markets for farm products and for the renewal, refusal, suspension and revocation of such licences;
- (l) prohibiting persons from engaging in the marketing of farm products and from operating markets for farm products except under the authority of a licence under this Act;
- (m) prescribing the terms and conditions upon which licences may be issued, renewed, suspended and revoked and fixing the fees payable therefor;
- (n) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1937, c. 307, s. 2 (1); 1946, c. 28, s. 1; 1947, c. 36, s. 1; 1949, c. 31, s. 1 (1); 1950, c. 19, s. 2.

Limitation
as to time.

- (2) Any regulation made under this section may be limited as to time and place. R.S.O. 1937, c. 307, s. 2 (2).

Definitions

- (3) Any word or expression used in any regulation made under this section may be defined in the regulation for the purposes of the regulations. 1949, c. 31, s. 1 (2).

3.—(1) The Minister may appoint inspectors and graders whose duties shall be to carry out the provisions of this Act. Inspectors, appointment of.
R.S.O. 1937, c. 307, s. 3; 1950, c. 19, s. 3 (1).

(2) The Minister may designate places where farm products may be inspected and such highway inspection points as are considered necessary. 1939, c. 15, s. 2. Minister may designate inspection places.

(3) The Minister may, by order, require persons in charge of farm products that are being transported from an area designated by him to proceed to a designated highway inspection point and to remain there until the farm products are inspected. 1948, c. 29, s. 1. Minister may order transporters to proceed to inspection point.

(4) The Minister may authorize the experimental use of any package, but such package shall be identified and used only in the manner authorized by the Minister. 1950, c. 19, s. 3 (2). Experimental use of packages.

4.—(1) Every inspector may, for the purpose of enforcing the provisions of this Act or the regulations, Powers of inspectors.

(a) enter any premises, vessel, boat, car, truck or other conveyance used for the storage, processing or carriage of any farm product and inspect any farm product found therein;

(b) stop any conveyance which he believes to contain any farm product and inspect such conveyance and any farm product found therein;

(c) obtain a sample of any farm product at the expense of the owner for the purpose of making an inspection thereof;

(d) require the production or furnishing of copies of or extracts from any books, shipping bills, bills of lading or other records relating to farm products. R.S.O. 1937, c. 307, s. 4 (1); 1950, c. 19, s. 4.

(2) For the purpose of making an inspection of any farm product the inspector may detain the farm product at the risk of the owner thereof, provided that after detaining any such product the inspector shall forthwith notify the owner or person having possession thereof of the detention by prepaid telegram or such other means as in the circumstances he may deem proper. R.S.O. 1937, c. 307, s. 4 (2). Detention of product for purpose of inspection.

Obstruction
of inspector.

(3) No person shall obstruct any inspector or refuse to permit any farm product to be inspected or furnish an inspector with false information.

Production
of docu-
ments.

(4) Every person shall, when required by an inspector, produce copies of and extracts from any books, shipping bills, bills of lading and other records relating to any farm product. 1946, c. 28, s. 2.

Detention
of products.

5. Any farm product in respect of which, in the opinion of the inspector, an offence against this Act or the regulations has been committed, may be placed under detention at the risk and expense of the owner by the inspector until such time as the owner of the farm product complies with this Act and the regulations, provided that where any person is convicted of an offence in respect of any such farm product the convicting magistrate may declare such farm product to be forfeited to His Majesty, whereupon it may be destroyed or otherwise disposed of as the Minister may direct. R.S.O. 1937, c. 307, s. 5.

Detention
of package.

6. For the purpose of making an inspection of a package an inspector may detain such package including any farm product that may be contained in such package at the risk of the owner thereof, and the provisions of this Act relating to the detaining and placing under detention of farm products shall apply *mutatis mutandis* to packages and any farm products contained therein. 1939, c. 15, s. 3.

Certificate
of in-
specter.

7. The production by the inspector of a certificate of his appointment purporting to be signed by the Minister shall be *prima facie* evidence of the facts stated in the certificate and conclusive evidence of the authority of the inspector to inspect any farm product. R.S.O. 1937, c. 307, s. 6.

Penalties.

8.—(1) Except as provided in subsection 2, every person who contravenes any of the provisions of this Act or the regulations shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$10 and not more than \$50 for a first offence and to a penalty of not less than \$50 and not more than \$500 for any subsequent offence.

Obstruction
of inspector.

(2) Every person who contravenes any of the provisions of subsection 3 of section 4 shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$200 and not more than \$1,000 and in default of payment to imprisonment for a term of not more than two months. 1950, c. 19, s. 5.

9. No proceedings or conviction under this Act shall affect the right of any person to any legal remedy to which he would otherwise be entitled. R.S.O. 1937, c. 307, s. 8. Legal remedy not affected.

10. For the purpose of jurisdiction, in any complaint, information or conviction for a violation of any of the provisions of this Act or the regulations, the matter complained of may be alleged and shall be deemed to have arisen at the place where the farm product was packed, sold, offered, exposed or had in possession for sale or transportation as the case may be, or at the residence or usual place of residence of the person charged with the violation. R.S.O. 1937, c. 307, s. 9. Where matter complained of deemed to have arisen.

CHAPTER 131

The Farm Products Marketing Act**1. In this Act,**Interpre-
tation.

- (a) "Board" means Farm Products Marketing Board;
- (b) "farm products" includes animals, meats, eggs, poultry, wool, dairy products, grains, seeds, fruit, fruit products, vegetables, vegetable products, maple products, honey, tobacco and such articles of food or drink manufactured or derived in whole or in part from any such product and such other natural products of agriculture as may be designated by the regulations;
- (c) "licence" means a licence provided for under the regulations;
- (d) "local board" means a board constituted under a scheme;
- (e) "marketing" includes advertising, buying, financing, selling, transporting, shipping for sale or storage and offering for sale, but does not include buying and selling by retail;
- (f) "Minister" means Minister of Agriculture;
- (g) "regulated product" means a farm product in respect of which a scheme is in force;
- (h) "regulations" means regulations made under this Act;
- (i) "scheme" means any scheme for the marketing or regulating of any farm product which is in force under this Act. 1946, c. 29, s. 1.

2.—(1) The body corporate known as "The Farm Products Marketing Board" is continued. 1946, c. 29, s. 2 (1), *amended*. Board continued.

(2) The Board shall consist of one or more persons who shall be appointed by and hold office during the pleasure of the Lieutenant-Governor in Council. Constitution of Board.

Chairman. (3) The Lieutenant-Governor in Council may appoint one of the members of the Board to act as chairman.

Allowances to members. (4) The members of the Board shall receive such allowances and expenses as the Lieutenant-Governor in Council may determine.

Officers, clerks, etc., appointment of. (5) The Board, subject to the approval of the Lieutenant-Governor in Council, may appoint such officers, clerks and employees as it deems necessary, and the remuneration of such officers, clerks and employees shall be determined by the Lieutenant-Governor in Council. 1946, c. 29, s. 2 (2-5).

Authority of Board.

3.—(1) The Board shall have authority,

- (a) to investigate, arbitrate, adjudicate upon, adjust or otherwise settle any dispute between producers, processors, distributors or transporters of regulated products or between any two of such classes of persons; 1946, c. 29, s. 3 (1), cl. (a); 1950, c. 20, s. 1 (1).
- (b) to investigate the cost of producing, processing, distributing and transporting any regulated product, prices, price spreads, trade practices, methods of financing, management, grading, policies and other matters relating to the marketing of regulated products; 1946, c. 29, s. 3 (1), cl. (b); 1950, c. 20, s. 1 (2).
- (c) to do such acts and make such orders and directions as are necessary to enforce the due observance and carrying out of the provisions of this Act, the regulations and any scheme; 1946, c. 29, s. 3 (1) cl. (c).
- (d) to establish price negotiating agencies in connection with any scheme and adopt or determine minimum prices for any regulated product or any class, variety, grade or size of a regulated product; 1950, c. 20, s. 1 (3).
- (e) to exempt from any scheme or any order or direction of the Board any person or class of persons engaged in the producing or marketing of any regulated product or any class, variety or grade of regulated product;
- (f) to require persons engaged in the producing or marketing of a regulated product to register their names, addresses and occupations with the Board, require such persons to furnish such information in

regard to the regulated product as the Board may determine, and inspect the books and premises of such persons; 1946, c. 29, s. 3 (1), cls. (e, f).

- (g) to authorize any local board,
 - (i) to exempt from any scheme or any order or direction of the local board any person or class of persons engaged in the producing or marketing of any regulated product or any class, variety or grade of regulated product,
 - (ii) to require persons engaged in the producing or marketing of a regulated product to register their names, addresses and occupations with the local board, to require such persons to furnish such information in regard to the regulated product as the local board may determine, and to inspect the books and premises of such persons; provided that where a person engaged in the producing or marketing of a regulated product is required to register with a local board, the Board shall not require him to register with the Board; 1950, c. 20, s. 1 (4).
- (h) to require the furnishing of security or proof of financial responsibility by any person engaged in the marketing of a regulated product;
- (i) to refuse to grant any licence for any reason which the Board may deem sufficient; 1946, c. 29, s. 3 (1), cls. (g, h).
- (j) to prohibit persons from engaging in the marketing or processing of any regulated product except under the authority of a licence issued by the Board;
- (k) to prohibit the marketing of any grade or size of any regulated product;
- (l) to fix harvesting, digging or shipping quotas and establish harvesting, digging or shipping quota committees for any regulated product; 1950, c. 20, s. 1 (5).
- (m) to suspend, revoke or refuse to renew any licence for failure to observe, perform or carry out any of the provisions of this Act, the regulations, any scheme or any order or direction of the Board, provided that

in every such case the applicant shall be afforded an opportunity of appearing before the Board to show cause why such licence should not be suspended or revoked or why such renewal should not be refused, as the case may be;

- (n) by such means as it may deem proper to stimulate, increase and improve the marketing of farm products. 1946, c. 29, s. 3 (1), cls. (i, j).

Powers of investigation.

Rev. Stat., c. 308.

(2) Upon any investigation under this section the Board shall have all the powers that may be conferred upon a commissioner under *The Public Inquiries Act*. 1946, c. 29, s. 3 (2).

Delegation of powers.

(3) The Board may delegate to a local board such of its powers as it deems necessary, and may, at any time, terminate such delegation of power. 1950, c. 20, s. 1 (6).

Furnishing information.

(4) The Board may require a local board to furnish information relating to any product regulated by the scheme under which the local board is constituted.

Local board to be body corporate.

(5) Every local board shall be a body corporate. 1946, c. 29, s. 3 (4, 5).

Approval of scheme of marketing.

4.—(1) Where the Board receives from any group of persons engaged in the marketing of any farm product, a petition or request asking that any scheme for the marketing or regulating of the farm product, including the establishment of a local board, be adopted, the Board may, if it is of opinion that the group of persons is fairly representative of the persons engaged in the phase of marketing represented by the group, recommend the adoption of such scheme to the Minister. 1946, c. 29, s. 4 (1).

Approval of schemes.

(2) The Lieutenant-Governor in Council may,

- (a) approve any scheme or any part thereof with such variations as he may deem proper and declare it to be in force in Ontario or any part thereof; and

(b) amend any approved scheme as he may deem proper.

By-laws.

(3) The Lieutenant-Governor in Council may make regulations prescribing by-laws for regulating the government of local boards and the conduct of their affairs. 1949, c. 32, s. 2.

5. Every person who violates any of the provisions of this ^{Penalty.} Act or the regulations, or of any scheme declared to be in force under this Act, or any order or direction of the Board or of any local board, shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$50 and for a subsequent offence to a penalty of not less than \$50 and not more than \$500. 1946, c. 29, ss. 5, 7; 1950, c. 20, s. 2.

6.—(1) Every person who fails to pay at least the minimum ^{Failure to pay determined price,} price adopted or determined by the Board or by any local board for any regulated product, in addition to the penalty provided for in section 5, shall be liable to a penalty of an amount equal to the amount of such minimum price less any amount paid by such person as payment in full or part payment for such regulated product. 1950, c. 20, s. 3 (1).

(2) The penalties imposed under this section shall be paid ^{Distribution of penalty.} to the Board and the Board may, subject to the approval of the Minister, distribute the amount so received *pro rata* among the persons who failed to receive at least the minimum price. 1946, c. 29, s. 6 (2); 1950, c. 20, s. 3 (2).

7.—(1) Subject to the approval of the Lieutenant-Governor ^{Regulations} in Council, the Board may make regulations,

- (a) regulating and controlling the marketing of regulated products, including the agency through which the products may be marketed;
- (b) providing for the licensing by the Board of persons engaged in the marketing or processing of any regulated product and fixing the licence fees payable by such persons at different amounts and providing for the payment of the licence fees in instalments; 1946, c. 29, s. 8 (1), cls. (a, b); 1950, c. 20, s. 4 (1).
- (c) providing that any class of licence fees shall be payable to a local board to be used by it for the purpose of carrying out and enforcing the provisions of this Act, the regulations and the scheme under which the local board is established;
- (d) prescribing the form of licences and the terms and conditions upon which such licences may be issued, renewed, suspended or revoked;
- (e) providing for the making of returns or the furnishing of information by any person licensed under this Act;

- (f) providing for the carrying out of any scheme of marketing declared by the Lieutenant-Governor in Council to be in force; 1946, c. 29, s. 8 (1), cls. (c-f).
- (g) providing for the collection, use and return of service charges or equalization fees on regulated products; 1949, c. 32, s. 3; 1950, c. 20, s. 4 (1).
- (h) providing for the furnishing of security or proof of financial responsibility by persons who purchase regulated products for resale; 1946, c. 29, s. 8 (1), cl. (g); 1950, c. 20, s. 4 (1).
- (i) providing for the administration and disposition of any moneys or securities furnished as proof of financial responsibility; 1950, c. 20, s. 4 (2).
- (j) exempting any person or class of persons from the provisions of the regulations or any portion thereof;
- (k) designating any article of food or drink manufactured or derived in whole or in part from a farm product and designating any natural product of agriculture which shall be deemed to be a farm product;
- (l) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1946, c. 29, s. 8 (1), cls. (h-j).

Regulations
may be
limited.

(2) Any regulations made under this section may be limited as to time and place. 1946, c. 29, s. 8 (2).

Administra-
tion of Act.

8. The moneys required for the purpose of the administration of this Act shall be paid out of such sums as may be appropriated therefor by the Legislature. 1946, c. 29, s. 9.

CHAPTER 132

The Fatal Accidents Act

1. In this Act,

- (a) "child" includes son, daughter, grandson, granddaughter, stepson, stepdaughter, adopted child, and a person to whom the deceased stood *in loco parentis*; Interpretation.
- (b) "parent" includes father, mother, grandfather, grandmother, stepfather, stepmother, a person who adopted a child, and a person who stood *in loco parentis* to the deceased. R.S.O. 1937, c. 210, s. 1.

2. Where the death of a person has been caused by such wrongful act, neglect or default, as, if death had not ensued, would have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances amounting in law to culpable homicide. R.S.O. 1937, c. 210, s. 2. Liability for damages where death caused by wrongful act, neglect, or default.

3.—(1) Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and except as hereinafter provided shall be brought by and in the name of the executor or administrator of the deceased, and in every such action such damages may be awarded as are proportioned to the injury resulting from such death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the above-mentioned persons in such shares as may be determined at the trial. R.S.O. 1937, c. 210, s. 3 (1). For whose benefit and in whose name action to be brought.

(2) In an action brought under this Act where funeral expenses have been incurred by the parties for whose benefit the action is brought, damages may be awarded not exceeding \$250 for necessary expenses of the burial of the deceased including transportation and things supplied and services rendered in connection therewith. 1946, c. 30, s. 1. Funeral expenses.

Assessment
of damages,
insurance
premiums.

(3) In assessing the damages in any action there shall not be taken into account any sum paid or payable on the death of the deceased or any future premiums payable under any contract of assurance or insurance. R.S.O. 1937, c. 210, s. 3 (2).

How money
may be paid
into court.

4. The defendant may pay into court one sum of money as compensation for his wrongful act, neglect or default, to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1937, c. 210, s. 4.

One action
only to lie
for the same
cause.

5. Not more than one action shall lie for and in respect of the same subject matter of complaint, and every such action shall be commenced within twelve months after the death of the deceased and not afterwards. R.S.O. 1937, c. 210, s. 5.

Particulars
of bene-
ficiaries.

6.—(1) The plaintiff shall, in his statement of claim, set forth the persons for whom and on whose behalf the action is brought.

Proof as to
persons
entitled.

(2) There shall be filed with the statement of claim an affidavit by the plaintiff in which he shall state that to the best of his knowledge, information and belief the persons on whose behalf the action is brought as set forth in the statement of claim are the only persons entitled or who claim to be entitled to the benefit thereof.

Dispensing
with proof.

(3) The court in which the action is brought or a judge thereof, if of opinion that there is a sufficient reason for doing so, may dispense with the filing of the affidavit. R.S.O. 1937, c. 210, s. 6.

When action
may be
brought by
persons
beneficially
interested.

7.—(1) If there is no executor or administrator of the deceased, or there being such executor or administrator, no such action is, within six months after the death of the deceased, brought by such executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by such executor or administrator.

Regulations
and pro-
cedure in
such case.

(2) Every action so brought shall be for the benefit of the same persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by such executor or administrator. R.S.O. 1937, c. 210, s. 7.

Apportion-
ment.

8.—(1) Where the compensation has not been otherwise apportioned a judge in chambers may apportion it among the persons entitled.

(2) The judge may in his discretion postpone the distribution of money to which infants are entitled and may direct payment from the undivided fund. R.S.O. 1937, c. 210, s. 8. When payment may be postponed.

9. Where actions are brought by or for the benefit of two or more persons claiming to be entitled, as wife, husband, parent or child of the deceased, the court in which the actions or either of them are pending may make such order as it may deem just for the determination not only of the question of the liability of the defendant but of all questions as to the persons entitled under this Act to the damages, if any, that may be recovered. R.S.O. 1937, c. 210, s. 9. Where several actions brought by rival claimants.

CHAPTER 133

The Federal District Commission Act

1. The councils of the corporations of the City of Ottawa, the County of Carleton, the County of Russell and of any municipality in either of the said counties or of any of them may, with the approval of the Ontario Municipal Board first obtained, convey to The Federal District Commission for a real or nominal consideration any highway, square, street, avenue, drive, thoroughfare or bridge, or interest therein, vested in the municipality upon such terms and subject to such conditions as may be agreed upon between the council and the Commission. R.S.O. 1937, c. 276, s. 1.

Transfer of highways, etc., to Federal District Commission by agreement.

2. The corporation of any municipality in which land vested in the Commission is situate or which lies within three miles of any such land may enter into agreements with the Commission for the undertaking by the corporation in, upon, under, through, across or along any such land of any work of any of the characters or descriptions mentioned in *The Local Improvement Act* and any such agreement may provide for the maintenance, repair and renewal of any work so undertaken. R.S.O. 1937, c. 276, s. 2.

Undertaking of local improvement works by municipality by agreement.

Rev. Stat., c. 215.

3. Any work undertaken by the corporation of a municipality pursuant to any agreement entered into with the Commission under section 2 may be undertaken by the corporation as a local improvement under *The Local Improvement Act* and in accordance with the provisions thereof, notwithstanding that the land wherein, whereon or whereunder the same is undertaken is not a street or land vested in the corporation or that the council thereof has limited or no jurisdiction or control thereover. R.S.O. 1937, c. 276, s. 3.

Assessment of cost of works undertaken.

Rev. Stat., c. 215.

4. Every agreement entered into under this Act may provide that the corporation of the municipality entering into the same shall solely be responsible for any injury, loss or damage resulting from or by reason of the undertaking, execution or existence of any work undertaken pursuant to the agreement during the time of its construction and after its completion or from non-repair of the same, and for all claims, demands, actions, suits, proceedings, costs and damages resulting therefrom. R.S.O. 1937, c. 276, s. 4.

Liability of municipality for actions.

Assent to
electors not
requisite.

5. It shall not be necessary that any agreement entered into hereunder or any by-law authorizing the agreement be submitted to or receive the assent of the electors of the municipality the corporation of which enters into the agreement. R.S.O. 1937, c. 276, s. 5.

Rev. Stat.,
c. 243,
ss. 469, 470,
and 472 not
to apply.

6. Sections 469, 470 and 472 of *The Municipal Act* shall not apply with respect to any highway conveyed to the Commission under this Act. R.S.O. 1937, c. 276, s. 6.

Rev. Stat.,
c. 243, s. 478
to apply.

7. Section 478 of *The Municipal Act* shall apply to enable the council of any of the municipalities mentioned in section 1 to grant aid to the Commission for any of the purposes mentioned in the said section 478. R.S.O. 1937, c. 276, s. 7.

Validity of
conveyances
and
agreements.

8. Any conveyance made and agreement entered into pursuant to this Act shall be legal, valid and binding upon the corporation of the municipality entering into the same and the ratepayers thereof, and shall not be open to question in any court. R.S.O. 1937, c. 276, s. 8.

CHAPTER 134

The Female Refuges Act

1. In this Act,

Interpreta-
tion.

- (a) "industrial refuge" means an institution for the care of females, designated by the Lieutenant-Governor in Council as an institution to which females may be committed under this Act;
- (b) "inspector" means inspector appointed under *The Penal and Reform Institutions Inspection Act*, who is designated to inspect institutions under this Act; Rev. Stat. c. 273.
- (c) "judge" means judge of the Supreme Court, judge of a county or district court, judge of a juvenile court, or magistrate;
- (d) "Minister" means Minister of Reform Institutions;
- (e) "superintendent" means matron or other person in charge of an industrial refuge. R.S.O. 1937, c. 384, s. 1; 1948, c. 30, s. 1.

2.—(1) Any female between the ages of fifteen and thirty-five years, sentenced or liable to be sentenced to imprisonment in a common jail by a judge, may be committed to an industrial refuge for an indefinite period not exceeding two years. R.S.O. 1937, c. 384, s. 2 (1). Commitment of females to industrial refuges.

(2) An inmate of a training school for girls may be transferred on warrant signed by the inspector to an industrial refuge, there to be detained for the unexpired portion of the term of imprisonment to which she was sentenced or committed. R.S.O. 1937, c. 384, s. 2 (2); 1942, c. 34, s. 13 (1). Commitment of inmates of industrial schools.

(3) No Protestant female shall be committed or transferred under this Act to a Roman Catholic institution and no Roman Catholic female shall be committed or transferred to a Protestant institution. R.S.O. 1937, c. 384, s. 2 (3). Religion of inmates.

3.—(1) The inspector may at any time order the release on parole of any inmate of an industrial refuge upon such conditions as may be deemed proper. Release of inmates on parole.

Re-taking
inmates on
breach of
conditions
of parole.

(2) Every parole granted to an inmate shall be conditional whether so expressed or not and a person who fails to observe the conditions of parole may be taken into custody on warrant signed by the inspector and may be returned to the industrial refuge.

Record of
conduct.

(3) A correct record of the conduct of the inmates of the industrial refuge shall be kept with a view to permitting any inmate to be released on parole by the inspector. R.S.O. 1937, c. 384, s. 3.

Discharge
by order of
Lieutenant-
Governor.

4. The Lieutenant-Governor may at any time order that any person who has been committed or transferred to an industrial refuge shall be discharged. R.S.O. 1937, c. 384, s. 4.

Transfer to
jail or
reformatory.

5. The inspector may direct the removal of any inmate from an industrial refuge to a common jail or to the Andrew Mercer Ontario Reformatory for Females. R.S.O. 1937, c. 384, s. 5; 1939, c. 47, s. 12.

Female
bailiff to
make
transfer.

6. Any female bailiff to whom the warrant of the judge or the inspector is directed may convey to the industrial refuge named in the warrant the person named therein and deliver her to the superintendent. R.S.O. 1937, c. 384, s. 6.

Recapture
of escaped
inmates.

7. An inmate who escapes from an industrial refuge may be again arrested without any warrant by any constable or other police officer and returned to the refuge. R.S.O. 1937, c. 384, s. 7.

Examination
of persons
in custody.

8.—(1) A legally qualified medical practitioner having the care of the health of the inmates of an industrial refuge shall examine all inmates within three days after their admission to the refuge and every six months thereafter.

Certificate
to be for-
warded to
inspector.

(2) The superintendent shall forward to the inspector the medical practitioner's reports of every inmate within three days after the examination prescribed by subsection 1. R.S.O. 1937, c. 384, s. 8.

Appointment
of a board.

9.—(1) The Lieutenant-Governor in Council may appoint a board composed of three persons, namely, the inspector and two legally qualified medical practitioners.

Powers of
the board.

(2) The board shall review findings of the medical practitioner as provided for in section 8 and for such purposes may examine inmates and shall have access to all institutional records pertaining to the inmates brought before them.

(3) The board may make such recommendations to the inspector with respect to all inmates examined as aforesaid as may be deemed proper. Board may make recommendations.

(4) The inspector upon recommendation of the board may direct the removal of any feeble-minded inmate to the Ontario Hospital School, Orillia. Transfer of patient to hospital school.

(5) The inspector upon recommendation of the board may direct the removal of any inmate who is suffering from venereal disease to a hospital for proper treatment. Transfer of patient to hospital.

(6) The corporation of the municipality in which an inmate transferred to an hospital receiving aid was at the time of commitment resident, shall be liable for the maintenance of the inmate and the provisions of *The Public Hospitals Act* with respect to maintenance shall be applicable thereto. Maintenance.
R.S.O. 1937, c. 384, s. 9. Rev. Stat., c. 307.

10.—(1) No inmate shall be discharged from an industrial refuge if she has syphilitic or other venereal disease or is suffering from any contagious or infectious disease or has any acute or dangerous illness, but she shall remain in the industrial refuge until a legally qualified medical practitioner on the staff of the refuge gives a written certificate that such inmate has sufficiently recovered from the disease or illness to be discharged, and any inmate remaining from any such cause in the industrial refuge shall continue to be under its discipline and control. Detention of inmates with certain diseases.

(2) The superintendent shall forward to the inspector the medical practitioner's reports of all persons detained, as provided for in subsection 1, once every thirty days. R.S.O. 1937, c. 384, s. 10. Report to be forwarded to the inspector.

11. The superintendent shall forward to the inspector every warrant providing for the admission of any inmate within three days of such admission. R.S.O. 1937, c. 384, s. 11. Warrants to be forwarded to inspector.

12. No person shall be admitted to an industrial refuge except on warrant signed by a judge or transfer warrant signed by the inspector. R.S.O. 1937, c. 384, s. 12. No one to be admitted except on warrant.

13. Every industrial refuge shall be a house of correction for the purpose of the *Prisons and Reformatories Act* (Canada). R.S.O. 1937, c. 384, s. 13. Refuges to be houses of correction. R.S.C. 1927, c. 163.

14. All by-laws or regulations of the trustees or other governing body having the control or management of an Regulations.

industrial refuge for the government, management and discipline of such institution or as to maintenance, employment, classification, instruction, correction, punishment and reward of persons detained therein shall be in writing and no such by-law shall have force or effect until approved by the Lieutenant-Governor in Council upon the report of the inspector. R.S.O. 1937, c. 384, s. 14.

Who may
be com-
mitted.

15.—(1) Any person may bring before a judge any female under the age of thirty-five years who,

(a) is found begging or receiving alms or being in any street or public place for the purpose of begging or receiving alms;

(b) is an habitual drunkard or by reason of other vices is leading an idle and dissolute life.

Inquiry to
be made.

(2) No formal information shall be requisite, but the judge shall have the person brought before him and shall in the presence of such person take evidence in writing under oath, of the facts charged and shall make reasonable inquiry into the truth thereof.

Hearings
in private.

(3) The judge shall hear all cases coming before him under this section in private.

Committal
to industrial
refuge.

(4) If the judge is satisfied on inquiry that it is expedient to deal with such person under this Act instead of committing her to a jail or reformatory, he may commit such person to an industrial refuge for an indefinite term of not more than two years. R.S.O. 1937, c. 384, s. 15.

Appeal to
Court
of Appeal.

(5) Any order made under this Act shall be subject to an appeal to the Court of Appeal.

Rev. Stat.,
c. 379 to
apply.

(6) Except as otherwise provided herein, *The Summary Convictions Act* shall apply to proceedings under this Act. 1942, c. 34, s. 13 (2).

Copy of
depositions
to be
forwarded.

16. The judge shall deliver to the person having the execution of the warrant the depositions taken by him or a certified copy thereof, which depositions or copy shall be delivered to the superintendent or officer receiving such person into the industrial refuge. R.S.O. 1937, c. 384, s. 16.

Parents or
guardians
may bring
charge be-
fore judge.

17. Any parent or guardian may bring before a judge any female under the age of twenty-one years who proves unmanageable or incorrigible and the judge may proceed as provided in sections 15 and 16. R.S.O. 1937, c. 384, s. 17.

18. All commitments made under this Act shall be reported by the judge to the secretary of the Board of Parole within three days from the making of the order and it shall be the duty of the Board to investigate the case of every person confined under this Act and if deemed proper the Board may recommend to the inspector the granting of parole to any such person. R.S.O. 1937, c. 384, s. 18.

Report and
investiga-
tion of cases
by Parole
Board.

19. The Lieutenant-Governor in Council may make regulations providing for the amount payable by a municipality to an industrial refuge for the maintenance of females belonging to any such municipality committed to such industrial refuge and providing for the manner of determining to which municipality any female belongs. R.S.O. 1937, c. 384, s. 19.

Mainten-
ance.

CHAPTER 135

The Ferries Act

1. Save as herein otherwise provided every grant or licence of ferry shall be by the Lieutenant-Governor under the Great Seal and shall not extend for a longer term than seven years at any one time. R.S.O. 1937, c. 175, s. 1. Issue and duration of licences.

2. Save as herein otherwise provided no ferry shall be leased by the Crown, nor shall any lease thereof be renewed or any licence of ferry be granted by the Crown, except by public competition, and after notice of the time and place at which tenders will be received for the lease or licence for such ferry inserted at least once in each of four consecutive weeks in *The Ontario Gazette*, and in one or more of the newspapers published in the county or district in which the ferry is situate, and to persons giving such security as the Lieutenant-Governor in Council may prescribe. R.S.O. 1937, c. 175, s. 2. Requisites to issue.

3. Except in the case of municipalities as hereinafter provided, where the limits to which the exclusive privilege of any ferry extends are not already defined, such exclusive privilege shall not be granted for a greater distance than one mile and a half on each side of the place at which the ferry is usually kept, but nothing herein shall invalidate or infringe upon any existing grant or right of ferry. R.S.O. 1937, c. 175, s. 3. Limits of ferries.

4.—(1) Where a ferry is required over any stream or other water and the two shores are in different local municipalities not in the same county, or one shore is in a city or town separated from a county and the other is in another municipality in the same county, the Lieutenant-Governor may grant a licence to either of such municipalities exclusively, or to both jointly, or to either of the counties or to both jointly, or to one of the counties jointly with a city or town, as he may consider most conducive to the public interest. Licence for ferry between two municipalities.

(2) The licence shall confer the right to establish a ferry from shore to shore on such stream or other water, with such limits and extent as may appear advisable to the Lieutenant-Governor in Council and be expressed in the licence. Extent of right conferred, etc.

Conditions of licence as to motive power and other matters.

(3) The licence shall be upon conditions as to the description of craft and motive power to be used and upon such further terms and conditions as the Lieutenant-Governor in Council may direct, and the terms and conditions shall be expressed in the licence.

Municipalities sub-letting ferries.

(4) The council of the municipality may pass by-laws, not inconsistent with the terms of the licence, for sub-letting the ferry to such person and upon such terms and conditions as the council may think fit.

Concurrence of municipalities where joint licence.

(5) Where a licence is granted to two municipalities jointly, no by-law of the council of one municipality shall have any force until a by-law has been passed in similar terms, as nearly as may be, by the council of the other municipality.

Application of certain provisions excluded.

(6) The provision as to the duration of the licence and the provisions of section 2 shall not apply to this section. R.S.O. 1937, c. 175, s. 4.

Municipal by-laws to establish, operate and license ferries.

5.—(1) The council of every township, town or village may pass by-laws for establishing and for maintaining and operating, and the council of every municipality, other than a county, may pass by-laws for licensing upon such terms and conditions as may be deemed proper and for regulating ferries between any two places in the municipality, or over any navigable waters in or upon the boundary of the municipality, and for establishing the rates of ferriage to be taken thereon; but no such by-law shall have effect until approved by the Lieutenant-Governor in Council.

Powers of county councils.

(2) The council of every county shall have the like power in regard to ferries between places which are both situate within the county but not within the same local municipality, provided that neither of such places is situate in a city or town separated from the county for municipal purposes.

Powers of Lieutenant-Governor in Council.

(3) Until the council exercises the powers conferred by this section, the Lieutenant-Governor in Council may license and regulate such ferries and establish the rates of ferriage to be taken thereon. R.S.O. 1937, c. 175, s. 5.

Granting exclusive privileges.

6. The council of any municipality may grant exclusive privileges in any ferry vested in the corporation of the municipality. R.S.O. 1937, c. 175, s. 6.

7. Any person may keep at a ferry a boat, vessel or other craft for his own private use, or may use, for the accommodation of himself or of his employer, his own or his employer's boat, vessel or craft to cross the stream or other water on which the ferry is situate; but such privilege shall not be used for the purpose of taking, carrying or conveying any other person or property for hire, gain, reward or profit, or hope thereof, or directly or indirectly to enable any such other person to evade the payment of tolls at the ferry. R.S.O. 1937, c. 175, s. 7.

Right of persons to keep boats at ferry for their own use.

8. If any person unlawfully interferes with any right or licence of ferry by taking, carrying or conveying at any ferry across the stream or other water on which the same is situate any person, cattle, carriage or wares in any boat, vessel or other craft for hire, gain, reward, profit or hope thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any lessee or licensee of the Crown of any such ferry, the offender shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$20, to be paid to the person aggrieved. R.S.O. 1937, c. 175, s. 8.

Penalty for interfering with licensed ferryman's rights.

CHAPTER 136

The Fines and Forfeitures Act

1. In this Act, "fine" includes all pecuniary fines, penalties and forfeitures. R.S.O. 1937, c. 144, s. 1. Interpretation.

2.—(1) Where a fine is imposed for a contravention of an Act of this Legislature, and no other provision is made for the recovery thereof it shall be recoverable with costs by a civil action at the suit of the Crown or of any person suing as well for the Crown as for himself before any court of competent jurisdiction upon the evidence of one credible witness other than the person interested. Recovery of penalties by action.

(2) If no other provision is made and the recovery is at the suit of the Crown the fine shall belong to the Crown, and if at the suit of a private party then one-half shall belong to him and the other half shall belong to the Crown. Application of penalty.

(3) Where a fine belongs to the Crown the Lieutenant-Governor in Council may allow any part thereof to any person by whose information or aid it was recovered. R.S.O. 1937, c. 144, s. 2. Allowing part of penalty to informant.

3. Where the amount of the fine is in the discretion of the court or judge or in case the court or judge has power to impose imprisonment in addition to or in lieu of the fine and no other mode of recovery is prescribed it may be recovered upon indictment in the Supreme Court or court of general sessions of the peace. R.S.O. 1937, c. 144, s. 3. Recovery of penalties by indictment.

4. Every fine imposed for a contravention of any statute in force in Ontario and the proceeds of every forfeiture imposed and given to the Crown shall, where the disposal thereof is within the power of this Legislature, and except so far as other provision is made in respect thereto, be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund. R.S.O. 1937, c. 144, s. 4. To whom fine, etc., to be paid.

5.—(1) Where a fine is imposed by or under the authority of any Act of this Legislature the court or judge having cognizance of the proceedings for the recovery thereof may at any time after the commencement thereof remit in whole or Remission of penalty by court or judge.

in part such fine, whether the money is in whole or in part payable to the Crown or to some person other than the Crown and whether the same is recoverable by indictment, information, summary process, action or otherwise.

Magistrates
and justices
of the peace.

(2) A magistrate or justice of the peace shall not have the authority herein mentioned. R.S.O. 1937, c. 144, s. 5.

Remission
by Lieuten-
ant-
Governor in
Council.

Rev. Stat.,
c. 202.

6.—(1) The Lieutenant-Governor in Council may at any time remit, in whole or in part, any fine mentioned in section 5 unless the same is imposed by *The Legislative Assembly Act*, or by some Act respecting the election of members to the Assembly, or is recoverable in respect of any offence committed in connection with any such election.

Relief
against
civil conse-
quences of
conviction.

(2) Where a fine is remitted, the Lieutenant-Governor in Council may also relieve the offender from any other penalty or forfeiture consequent upon his conviction. R.S.O. 1937, c. 144, s. 6.

Costs not
to be
remitted.

7. Nothing in this Act shall authorize the remitting of costs incurred up to the time of remitting the penalty or forfeiture. R.S.O. 1937, c. 144, s. 7.

CHAPTER 137

The Fire Accidents Act

1. Where, by any statute or municipal by-law, or by any regulation made under a statute or by-law, the owner, proprietor, lessee, occupant, manager, or other person owning, occupying or having the control or management of a building is required to provide fire escapes, means of exit, stairways, or other structures or any appliance for the safety of inmates or of the public in case of fire, and it is shown in any action brought against such person to recover damages for death occasioned by fire in such building, that such requirements or any of them had not been complied with at the time of the fire, it shall be presumed that the non-compliance was the cause of the death. Onus of proof of compliance with requirements as to fire escapes, etc. R.S.O. 1937, c. 330, s. 1.

CHAPTER 138

The Fire Departments Act

1. In this Act,

Interpre-
tation.

- (a) "fire department" means fire department organized under *The Municipal Act* and equipped with one or more motorized fire pumpers meeting the prescribed standards; Rev. Stat., c. 243.
- (b) "Fire Marshal" means Fire Marshal of Ontario;
- (c) "full-time fire fighter" means person regularly employed in the fire department on a full-time salaried basis and assigned exclusively to fire protection or fire prevention duties and includes officers and technicians;
- (d) "population" means population ascertained from the last revised assessment roll;
- (e) "prescribed standards" means standards prescribed by the regulations;
- (f) "regulations" means regulations made under this Act;
- (g) "volunteer fire fighter" means person who voluntarily acts as a fire fighter for a nominal consideration or honorarium. 1949, c. 33, s. 1.

PART I

2.—(1) In every municipality having a population of not less than 10,000, the full-time fire fighters assigned to fire-fighting duties shall work according to, Hours of work.

- (a) the two-platoon system where the full-time fire fighters are divided into two platoons, the hours of work of which shall be, Two-platoon system.
- (i) for each platoon twenty-four consecutive hours on duty followed immediately by twenty-four consecutive hours off duty, or

- (ii) for one platoon in day-time ten consecutive hours on duty followed immediately by fourteen consecutive hours off duty and for the other platoon in night-time fourteen consecutive hours on duty followed immediately by ten consecutive hours off duty,

and the platoons shall alternate at least every two weeks from night work to day work and vice versa;

Three-platoon system.

- (b) the three-platoon system where the full-time fire fighters are divided into three platoons, the hours of work of which shall be eight consecutive hours on duty followed immediately by sixteen consecutive hours off duty, and the platoons shall rotate in their periods of duty and time off as may be arranged for the purpose of changing shifts at least every two weeks; or

Alternative systems.

- (c) any other system of platoons or hours of work under which the maximum hours of work or hours on duty are not more than seventy-two hours on the average in any work week.

Other personnel.

- (2) Full-time fire fighters assigned to other than fire-fighting duties shall work such hours as may be determined, but in no case shall such hours of work exceed the average work week of the other full-time fire fighters.

Maximum hours.

- (3) No full-time fire fighter shall be required to be on duty more than seventy-two hours on the average in any work week.

Weekly day off duty.

- (4) Every full-time fire fighter shall be off duty for one full day of twenty-four hours in every calendar week, but where a two-platoon system or a three-platoon system is in operation, the twenty-four hours release at the change of platoons shall not be regarded as a day off duty for the purposes of this section.

Time off duty.

- (5) Nothing in this Act shall prohibit any municipality from granting the full-time fire fighters more than one day off duty in every calendar week.

Free from calls.

- (6) The hours off duty of full-time fire fighters shall be free from fire department duties or calls.

Recall in emergency.

- (7) Notwithstanding this section, in the case of a serious emergency requiring the services of every full-time fire fighter, the chief or other officer in charge of the fire department in his

discretion may recall to duty the full-time fire fighters who are not on duty. 1949, c. 33, s. 2.

3. No deduction shall be made from the pay or the holidays of the full-time fire fighters by reason of this Act. 1949, c. 33, s. 3. Act not to affect salaries or holidays of employees.

4.—(1) When requested in writing by a majority of the full-time fire fighters, the council of the municipality shall bargain in good faith with a bargaining committee of the full-time fire fighters for the purpose of defining, determining and providing for remuneration, pensions or working conditions of the full-time fire fighters other than the chief of the fire department. 1949, c. 33, s. 4 (1); 1950, c. 21, s. 1 (1). Bargaining.

(2) Where not less than fifty per cent of the full-time fire fighters belong to a trade union any request made under subsection 1 shall be made by the union. Trade union.

(3) In every case the members of the bargaining committee shall be full-time fire fighters, but where not less than fifty per cent of the full-time fire fighters belong to a trade union the bargaining committee may, at all meetings held with the council of the municipality or any committee thereof for the purpose of bargaining, be accompanied by, Affiliated bodies.

(a) where the trade union is affiliated with a provincial body, one member of the provincial body; and

(b) where the trade union is affiliated with an international body, one member of the international body,

each of whom shall attend in an advisory capacity only. 1949, c. 33, s. 4 (2, 3).

(4) When the request involves pensions under a pension plan established or to be established under *The Municipal Act*, notice of such request shall be given to the Department of Municipal Affairs which may determine the maximum pension benefits which may be included in any agreement, decision or award with respect to such pension plan. 1950, c. 21, s. 1 (2). Pension plans under Rev. Stat., c. 243.

5.—(1) Where, after bargaining under section 4, the council of the municipality or the bargaining committee is satisfied that an agreement cannot be reached, it may by notice in writing to the bargaining committee or the council, as the case may be, require all matters in dispute to be referred to a Board of arbitration.

board of arbitration of three members in which case the council and the bargaining committee shall each appoint a member and the third member, who shall be the chairman, shall be appointed by the two members so appointed.

Failure to
appoint
member.

(2) Where either party fails to appoint a member of the board of arbitration within a reasonable time, or having appointed a person who is unable or unwilling to act, fails to appoint another member within a reasonable time, the Attorney-General may, upon the written request of the other party, appoint a member in lieu thereof.

Failure to
appoint
chairman.

(3) Where the two members of the board of arbitration appointed by the parties fail, within five days of the appointment of the one last appointed, to agree upon a third member, the Attorney-General may, upon notice in writing of such failure given to him by either of them or by either of the parties, appoint the third member.

Decision.

(4) Where upon an arbitration, a majority of the members of the board of arbitration fail to agree upon any matter, the decision of the chairman upon such matter shall be deemed to be the decision of the board of arbitration.

Costs.

(5) Each party shall assume its own costs of the arbitration proceedings and shall share the cost of the third arbitrator equally. 1949, c. 33, s. 5.

Effect of
agreement
or award.

6.—(1) Every agreement made under section 4 and every decision or award of a majority of the members of the board of arbitration under section 5 shall be binding upon the council of the municipality and the full-time fire fighters. 1949, c. 33, s. 6 (1).

Duration of
agreements,
etc.

(2) Every agreement, decision or award shall remain in effect until the end of the year in which it comes into effect and thereafter shall remain in effect until replaced by a new agreement, decision or award.

New agree-
ments, etc.

(3) Either party to collective bargaining which has resulted in an agreement, decision or award may proceed under sections 4 and 5 at any time for a new agreement, decision or award. 1950, c. 21, s. 2.

Agreement,
decision or
award,
when to
have effect.

7.—(1) An agreement, decision or award shall have effect upon the first day of the fiscal period in respect of which the council of the municipality may include provision in its estimates for any expenditures incurred in the agreement,

decision or award, whether such day is before or after the date of the agreement, decision or award, unless another day is named in the agreement, decision or award in lieu thereof.

(2) Where, pursuant to subsection 1, another day is named ^{Idem.} in an agreement, decision or award, as the day upon which the agreement, decision or award shall have effect and such day is prior to the first day of the fiscal period in respect of which the council of the municipality may include provision in its estimates for any expenditures involved in the agreement, decision or award, any of the provisions involving expenses shall, notwithstanding the naming of such day, have effect from the first day of such fiscal period. 1949, c. 33, s. 7.

8. Where a request in writing is made under subsection 1 ^{payment of expenditures.} of section 4 after the 30th day of November in any year and before the 1st day of December in the year next following and no agreement, decision or award has resulted therefrom at the time when the council is passing its estimates in the year next following the last-mentioned year, the council shall make adequate provision for the payment of such expenditures as may be involved in the request. 1949, c. 33, s. 8 (1).

9. This Act shall have effect notwithstanding any by-law ^{Act to prevail over municipal by-laws.} or regulation of a municipality relating to the fire department. 1949, c. 33, s. 9.

10. Every person who requires or requests a full-time fire ^{Offence.} fighter to be on duty in violation of this Act shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$10 and not more than \$100. 1949, c. 33, s. 10.

PART II

11.—(1) The Treasurer of Ontario may make an annual ^{Grants in aid.} grant out of the Consolidated Revenue Fund to every municipality having a fire department, and the amount of such grant shall be equal to the following proportion of the cost of the fire department for the year preceding the year in which the grant is made,

- (a) where the population of the municipality is less than 10,000, twenty-five per cent;
- (b) where the population of the municipality is 10,000 or more and less than 25,000, twenty per cent;

- (c) where the population of the municipality is 25,000 or more and less than 70,000, fifteen per cent; and
- (d) where the population of the municipality is 70,000 or more, ten per cent.

Fire areas in townships.

(2) Where there is one or more fire areas within a township; the population of the fire area or areas shall be deemed to be the population of the municipality for the purposes of this section. 1949, c. 33, s. 11.

Cost, how determined.

12.—(1) For the purposes of this Part the cost of the fire department shall be the total of the amounts paid during the year by the municipality in respect of,

- (a) the services of full-time and volunteer fire fighters;
- (b) uniforms, clothing allowances and personal equipment for full-time and volunteer fire fighters;
- (c) office supplies and equipment and clerical assistance;
- (d) *The Workmen's Compensation Act* or benefit plan approved by the Workmen's Compensation Board;
- (e) liability and fire insurance premiums;
- (f) contributions to any pension plan for full-time fire fighters;
- (g) membership in and expenses of representatives attending meetings of associations of fire marshals, fire chiefs or fire fighters or any fire college or fire school established under this Act;
- (h) fire apparatus and fire-fighting equipment meeting the prescribed standards and fire alarm and communication systems and equipment and the normal operation, maintenance and repair thereof;
- (i) the normal operation and maintenance of premises or portions thereof used for fire department purposes; and
- (j) such matters and things as the Lieutenant-Governor in Council may prescribe. 1949, c. 33, s. 12 (1); 1950, c. 21, s. 4.

Rev. Stat., c. 430.

(2) Where payment of any portion of the cost of the fire department has been deferred to any subsequent year or where the money required to pay any portion of the cost of the fire department has been raised by way of a loan or the issue of debentures, such portion shall, for the purposes of subsection 1, be deemed to be paid.

Interpretation of "paid".

(3) Where any municipality has an agreement under *The Municipal Act* for fire protection services to be furnished to it by any other municipality,

Fire protection agreements.
Rev. Stat., c. 243.

- (a) it shall be deemed to have a fire department, and the payments made during the year under such agreement shall be deemed to be the cost thereof;
- (b) the amount of the grant shall be based upon the population of the municipality or fire area or areas therein receiving the fire protection services; and
- (c) the municipality receiving payment for fire protection services furnished shall deduct the amount thereof from the total of its cost before any claim is made by it under this Part. 1949, c. 33, s. 12 (2, 3).

13. No grant under section 11 shall be made,

Conditions precedent to grants.

- (a) unless all full-time and volunteer fire fighters are under *The Workmen's Compensation Act* or a benefit plan approved by the Workmen's Compensation Board;
- (b) where the municipality is in default under Part I or under any agreement, decision or award made under the collective bargaining provisions of Part I; and
- (c) in the case of a municipality employing any full-time fire fighters, unless there is in force for the full-time fire fighters a pension plan established under any Act under which the municipality contributes an amount that is not less than five per cent of the salaries of the members participating in the plan. 1949, c. 33, s. 13 (1); 1950, c. 21, s. 5.

Rev. Stat., c. 430.

14.—(1) The treasurer of a municipality making claim in any year to a grant under section 11 shall, so soon as may be in the year after the cost of the fire department for the preceding year has been determined, send to the Department

Claims for grants.

of Municipal Affairs a statement in the form furnished by the Department showing,

- (a) that the requirements of section 13 have been met; and
- (b) the cost of the fire department for the preceding year together with such particulars thereof as the Department may request.

Certification
of statement.

(2) The Department of Municipal Affairs shall examine the statement and if it is satisfied as to the correctness thereof it shall so certify to the Treasurer of Ontario. 1950, c. 21, s. 6, *part*.

Fire
pumper
grants.

15.—(1) The Treasurer of Ontario may make an additional grant out of the Consolidated Revenue Fund to any municipality that for the first time purchases a motorized fire pumper meeting the prescribed standards as part of the organization or re-organization of its fire department, of an amount equal to ten per cent of the purchase price of such pumper.

Statement
of purchase.

(2) The treasurer of the municipality shall send a statement of such purchase to the Fire Marshal in the form furnished by him.

Certification
of statement.

(3) The Fire Marshal shall examine the statement and if he is satisfied as to the correctness thereof, he shall so certify to the Department of Municipal Affairs.

Idem.

(4) If the Department of Municipal Affairs is satisfied as to the correctness thereof, it shall so certify to the Treasurer of Ontario. 1950, c. 21, s. 6, *part*.

Reference
to Ontario
Municipal
Board,
fire depart-
ment costs;

16.—(1) Where the Department of Municipal Affairs notifies the treasurer of the municipality that it is not satisfied as to the correctness of the statement mentioned in section 14, the council of the municipality, within fourteen days of the receipt by the treasurer of the notice, may refer any matter in dispute to the Ontario Municipal Board, whose decision thereon shall be final and shall be acted upon by the Department.

fire
apparatus.

(2) Where the certificate of the Fire Marshal is required as to whether fire apparatus or fire-fighting equipment has met the prescribed standards, the council of the municipality, within fourteen days of the receipt by the treasurer of the municipality of notice of the certificate of the Fire Marshal,

if it is not satisfied with such certificate it may refer any matter in dispute to the Ontario Municipal Board, whose decision thereon shall be final and shall be acted upon by the Fire Marshal. 1950, c. 21, s. 6, *part*.

17. The Fire Marshal may,

Fire
schools.

- (a) establish, maintain and operate a central fire college for the training of fire department officers;
- (b) establish and operate regional fire schools for the training of fire fighters;
- (c) provide travelling instructors for fire fighters,

and the cost thereof shall be payable out of such moneys as may be appropriated by the Legislature for the purpose. 1949, c. 33, s. 17.

18. The Lieutenant-Governor in Council may make Regulations.
regulations,

- (a) prescribing standards for fire apparatus and fire-fighting equipment;
 - (b) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1949, c. 33, s. 18.
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CHAPTER 139

The Fire Guardians Act

1.—(1) The council of a township may, on the petition of one-third of the ratepayers, at any meeting to be held before the 1st day of April in any year, appoint by by-law not less than two resident freeholders for each polling subdivision within the municipality to carry out the provisions of this Act.

Appointment of fire guardians.

(2) The persons so appointed shall be called "fire guardians" and shall hold office until the first meeting of a new council elected after their appointment and until their successors are appointed. R.S.O. 1937, c. 327, s. 1.

Tenure of office.

2. No person shall, after the passing of such by-law, set out fire, or set fire to any brush heap or other combustible material, in any field, clearance or place in such township where the same would be likely to spread, between the 1st day of July and the 1st day of October in any year, without having first obtained permission in writing from one of the fire guardians. R.S.O. 1937, c. 327, s. 2.

Leave to be obtained before setting out fires.

3. Such permission shall not be pleaded or given in evidence in any action for negligently setting out fire, or in extenuation of so doing, or in mitigation of damages, but the absence of such permission shall be *prima facie* evidence of negligence. R.S.O. 1937, c. 327, s. 3.

Leave not to be relied on in actions for negligence.

4. A fire guardian on being requested to grant permission to set out fire shall examine the place at which it is intended to set out the fire and the adjacent land and the timber, trees and other property thereon, and he shall refuse such request if, in his opinion, it would not be safe to set out the fire. R.S.O. 1937, c. 327, s. 4.

Inspection by fire guardian before granting leave.

5. The council may, by by-law, make provision for payment to the fire guardians for their services and may fix a penalty to be imposed upon fire guardians refusing or neglecting to perform their duties under this Act or the by-law. R.S.O. 1937, c. 327, s. 5.

Matters to be provided for in the by-law.

6. Every person who contravenes the provisions of section 2 shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$100, recoverable on

Penalty.

information of any resident ratepayer in the municipality. R.S.O. 1937, c. 327, s. 6.

Applica-
tion of
penalty.

7. The complainant shall be entitled to one-half of the penalty and the other half shall be paid over to the treasurer of the municipality. R.S.O. 1937, c. 327, s. 7.

When Act
not to
apply.

8. This Act shall not apply to any portion of Ontario which has been declared a fire district under any Act. R.S.O. 1937, c. 327, s. 8.

CHAPTER 140

The Fire Marshals Act

1. In this Act,

Interpre-
tation.

- (a) "Minister" means that member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (b) "regulations" means regulations made by the Lieutenant-Governor in Council under this Act. R.S.O. 1937, c. 329, s. 1.

2.—(1) There shall be an officer to be known as the Fire Marshal, who shall be appointed by the Lieutenant-Governor in Council.

Appoint-
ment of
Fire
Marshal.

(2) There shall be an officer to be known as the Deputy Fire Marshal, who shall be appointed by the Lieutenant-Governor in Council, and shall act in the stead of the Fire Marshal in the absence of, or during the illness or incapacity of the Fire Marshal, or in the case of a vacancy in the office, and who, when so acting, shall have all the power and authority of the Fire Marshal, and who shall exercise such powers and perform such duties for the prevention or investigation of fire or the protection of life and property from fire as the Lieutenant-Governor in Council may deem expedient and as may be prescribed by the regulations.

Deputy
Fire
Marshal.

(3) The Lieutenant-Governor in Council may appoint such number of persons as he may deem necessary to be district deputy fire marshals, who shall, subject to the regulations, possess the powers to perform the duties of the Fire Marshal in the respective localities for which they are appointed, and shall be under the direction and control of the Fire Marshal.

District
deputy fire
marshals.

(4) The Lieutenant-Governor in Council may appoint inspectors who, under the direction of the Fire Marshal, shall investigate the cause, origin and circumstances of fires occurring in Ontario and perform such other duties as may be provided by this Act and the regulations, and while so acting every inspector shall be subject to the regulations and possess the same powers as the Fire Marshal.

Inspectors,
appoint-
ment of.

Officers and
assistants.

(5) The Lieutenant-Governor in Council may also appoint such officers, clerks and servants as may be deemed necessary for carrying out and enforcing the provisions of this or any other Act of Ontario relating to the prevention and investigation of fire, and of the regulations.

Salaries.

(6) The Fire Marshal, Deputy Fire Marshal, district deputy fire marshals, inspectors and other officers, clerks and servants shall receive such salaries or other remuneration as shall be fixed by the Lieutenant-Governor in Council.

Salaries and
expenses,
how pay-
able.

(7) The salaries and other remuneration and the expenses incurred in investigations and in the exercise of the powers and duties conferred and imposed upon the officers and assistants to the Fire Marshal or other persons in the prevention or investigation of fires, and generally all expenses incurred in carrying out the provisions of this Act or the regulations shall be payable out of such moneys as may be appropriated by the Legislature for salaries and expenses under this Act.

Grant to
fire pre-
vention as-
sociation.

(8) The Lieutenant-Governor in Council may direct the payment out of the appropriation made by the Legislature for salaries and expenses in connection with this Act of a grant to any association or league or society incorporated for the purpose of fire prevention, and such grant may be subject to such terms and conditions as the Lieutenant-Governor in Council may deem proper. R.S.O. 1937, c. 329, s. 2.

Powers
and duties
of Fire
Marshal.

3. Subject to the regulations and for the prevention and investigation of fire, it shall be the duty of the Fire Marshal, and he shall have power,

Municipal
by-laws.

(a) whenever he has reason to believe that the council of a municipality has not passed a by-law under the authority of any of the sections of *The Municipal Act* relating to the prevention of fire or protection of life and property therefrom, or that the by-law which has been passed by a municipal council is not complete or is not being enforced, to confer with members or officers of the council and to assist them as far as may be expedient and practicable in preparing, improving and enforcing the by-law;

Requiring
assistance.

(b) to require the chief of the fire department of a municipality or any other person who may be designated as an assistant of the Fire Marshal to assist in the enforcement of the by-law;

Propaganda
as to fire
prevention.

(c) to disseminate information and advice as to the prevention of fire by means of public meetings, news-

paper articles, exhibitions and moving picture films and otherwise as he may consider advisable;

- (d) to assist in the formation of local associations or leagues and to co-operate with any body or persons interested in developing and promoting the principles and practices of fire prevention; Assisting local organizations for fire prevention.
- (e) to keep a record of every fire reported to him with such facts, statistics and circumstances as may be required by the regulations; Records of fires.
- (f) to investigate the cause, origin and circumstances of any fire so reported to him and so far as it is possible determine whether it was the result of carelessness or design; R.S.O. 1937, c. 329, s. 4, cls. (a-f). Investigation of fires.
- (g) on the instructions of the Minister to investigate the cause, origin and circumstances of any explosion or of any conditions which in the opinion of the Minister might have caused fire, explosion, loss of life or damage to property and so far as possible determine whether the explosion was or conditions were the result of carelessness or design; 1941, c. 55, s. 12.
- (h) to report to the Crown attorney of the proper county or district the facts found upon the evidence in any case in which he has reason to suppose that loss by fire has been occasioned by criminal negligence or design or in which he deems an offence has been committed against this Act; Report to Crown attorney where offences suspected.
- (i) whenever he may deem it advisable in the public interest to order the withholding of insurance money which may become payable by reason of any fire for a period not exceeding sixty days from the occurrence of fire pending an investigation of the cause and circumstances of the fire; Withholding payment of insurance money.
- (j) Subject to the regulations, to enter upon, examine and inspect from time to time hotels, apartment houses, factories, work shops and other places where persons reside or are employed in numbers, and direct such alterations to be made and such precautions to be taken as he may deem necessary for the purpose of complying with any statute or regulation made for the better protection of life and property in such buildings. R.S.O. 1937, c. 329, s. 4, cls. (g-i). Powers of Fire Marshal as to entry and inspection.

Powers
to hold
inquiries.

Rev. Stat.,
c. 308.

Commis-
sioner of
Police, in-
vestiga-
tions by.

Remunera-
tion of Com-
missioner of
Police and
expenses of
officers.

Fire
Marshal's
deputy
pro tempore.

Employ-
ment of
expert and
profes-
sional as-
sistance.

Assistants
ex officio,
duties.

Their duty
to report.

4. For the purpose of any inquiry or investigation which it is his duty or which he has the power to hold under this Act, the Fire Marshal shall have and may exercise all the powers which may be conferred upon a commissioner appointed under *The Public Inquiries Act*. R.S.O. 1937, c. 329, s. 5.

5.—(1) The Commissioner of Police for Ontario shall have and may exercise the powers conferred upon the Fire Marshal by this Act or the regulations with respect to the investigation of the cause, origin and circumstances of fires.

(2) The Lieutenant-Governor in Council may fix the remuneration to be paid to the Commissioner of Police for Ontario for services under this section, and the amount so fixed and the expenses of any work performed for the Fire Marshal by any member of the Ontario Provincial Police Force shall be paid out of such moneys as may be appropriated by the Legislature for salaries and expenses in connection with this Act. R.S.O. 1937, c. 329, s. 6.

6. The Fire Marshal, subject to the approval in writing of the Minister, may by writing under his hand, appoint any other person his deputy *pro tempore* for the purpose of holding an investigation into the cause, origin and circumstances of any fire, and for that purpose, the deputy *pro tempore* shall have all the powers conferred upon the Fire Marshal by this Act or the regulations. R.S.O. 1937, c. 329, s. 7.

7. The Fire Marshal may, with the approval of the Minister, employ such legal, technical, scientific, clerical or other assistance as he may deem advisable or necessary in the conduct of any investigation held under this Act, and in carrying out the provisions of this Act relating to the prevention of fire and in the exercise and performance of the powers and duties of the Fire Marshal. R.S.O. 1937, c. 329, s. 8.

8.—(1) The chief of the fire department of every municipality in which a fire department is established, and the clerk of every other municipality shall be by virtue of the office held by him an assistant to the Fire Marshal, and it shall be the duty of every assistant to the Fire Marshal to act under his direction in carrying out the provisions of this Act.

(2) The assistants to the Fire Marshal shall report to him in writing on forms to be supplied by him, all the fires occurring in their respective municipalities within three days after receiving information of the fire.

(3) Except in the case of a city or town where the chief of the fire department is paid in whole or in part by the corporation of the municipality, every such assistant of the Fire Marshal shall be paid the sum of \$1 for each report, upon the certificate of the Fire Marshal, out of such moneys as may be appropriated by the Legislature for salaries and expenses in connection with this Act. R.S.O. 1937, c. 329, s. 9 (1-3). Fees of assistants.

(4) Whenever in any urban municipality a fire prevention bureau has been established by the corporation, or where the chief of the fire department of any urban municipality has designated one or more members of the fire department of such municipality as a fire prevention officer or officers, or where the Fire Marshal has so designated any other person, every person who is a member of the bureau or who is so designated, shall be an assistant to the Fire Marshal and shall be possessed of all the powers of an assistant to the Fire Marshal under this Act. R.S.O. 1937, c. 329, s. 9 (4); 1938, c. 12, s. 2. Assistants to the Fire Marshal.

(5) The chief of the fire department of a municipality shall have the same powers and duties with respect to any buildings or premises outside the territorial limits of the municipality as if the buildings or premises were situate within the municipality where, Powers of chief outside municipality.

(a) the buildings or premises are owned or used by the municipality; or

(b) the municipality has undertaken to provide fire protection for the buildings or premises. 1947, c. 102, s. 2 (1).

9.—(1) Every fire insurance company authorized to transact business in Ontario shall report to the Fire Marshal through the secretary or some other officer of the company designated by the board of directors for that purpose, all fire losses on property insured in any such company, giving the date of the fire, and such other particulars as are required by the regulations. to Fire Insurance companies, duty to report.

(2) The report shall be mailed to the Fire Marshal within three days after notice of loss is received by the company. Transmitting reports.

(3) Every such company shall also report to the Fire Marshal the amount of the loss as adjusted on each fire after the adjustment is made, Reporting losses adjusted.

Particulars
of fire to be
furnished
by insured.

Rev. Stat.,
c. 183.

(4) Every person sustaining or claiming to have sustained a loss by fire on property in Ontario insured wholly or partially in an insurance company not licensed or registered under *The Insurance Act* shall report to the Fire Marshal within three days after the occurrence of the fire the particulars of the insurance, the date of the fire, and such other information as may be called for by the regulations, and he shall also within ten days after completing proofs of loss against the company in which he is so insured file with the Fire Marshal a full statement of the amount of loss claimed from every such company.

Claimant on
loss to fur-
nish infor-
mation to
Fire
Marshal's
assistant.

(5) Every person sustaining a loss by fire on property in Ontario shall upon the written or oral request of any assistant to the Fire Marshal, furnish to the assistant within seven days after receipt of the request, whatever information may be required to complete the form of report called for in subsection 2 of section 8.

Adjusters
to furnish
report on
loss to Fire
Marshal.

(6) Every person adjusting a claim against a fire insurance company, whether the company is licensed to transact business in Ontario or not and whether the adjuster represents the company or the claimant, shall within three days after the completion of the adjustment, forward a report in writing to the Fire Marshal, giving the date of the fire, the value of the property affected by the different items of the policy as established during the process of the adjustment of the claim, the insurance in each company, the amount of loss allocated to be paid by each company and such other particulars as may be required by the regulations.

Fire Chief
to be
notified
of claim.

(7) Every person adjusting a claim against a fire insurance company in a municipality having an organized fire department shall, where the fire department has not been summoned to or attended at the fire giving rise to the claim, by notice in writing, advise the chief of the fire department of the occurrence of the fire. R.S.O. 1937, c. 329, s. 10.

Saving as
to duties
provided for
by munic-
ipal by-law.

10. Nothing in this Act shall render it obligatory for the Fire Marshal to perform in any local municipality such of the duties prescribed by this Act as are provided for by by-laws of the corporation. R.S.O. 1937, c. 329, s. 11.

Fund for
expenses of
Fire
Marshal.

Rev. Stat.,
c. 183.

11.—(1) Every person, syndicate, reciprocal exchange or corporation transacting the business of fire insurance within the meaning of *The Insurance Act*, shall, in addition to the taxes now required by law to be paid, pay to the Treasurer of Ontario on or before the 30th day of April in each year, an amount not exceeding one-third of one per cent calculated

upon the gross premiums, fixed payments and assessments received during the preceding year in respect of fire insurance business transacted in Ontario excluding,

- (a) premiums returned;
- (b) premiums paid in respect of reinsurance ceded to insurance companies licensed to transact business in Ontario; and
- (c) the cash value of dividends paid or credited to policy holders by mutual insurance companies and reciprocal exchanges,

as shown by the annual statement furnished to the Department of Insurance under *The Insurance Act*. 1942, c. 34, s. 14.

(2) Every person sustaining or claiming to have sustained a loss by fire on property in Ontario insured in a company not licensed or registered under *The Insurance Act* shall pay to the Treasurer of Ontario an amount equal to one per cent upon the gross amount of loss claimed upon the unlicensed or unregistered company and the amount shall be due and payable not later than sixty days from the date of filing the claim upon the company or its representative whether the claim has or has not been paid at the expiration of such sixty days, provided that where the claim is sent by mail, the date of the mailing shall be taken for the purposes of this subsection to be that upon which the claim was filed.

Contribution by persons insured in unregistered companies.

Rev. Stat., c. 183.

(3) The total of such amounts shall constitute a special fund for the maintenance of the office of Fire Marshal, and the expense incident thereto, but any portion of the fund remaining unexpended at the end of any year and not required for maintenance shall be carried forward to the next fiscal year and the next assessment upon the fire insurance companies correspondingly reduced.

Application of fund.

(4) The Treasurer of Ontario may make a preliminary assessment of one-third of one per cent as provided in subsection 1 and such assessment shall be made upon the basis of the premiums, fixed payments and assessments received in respect of business transacted in Ontario during the last complete year for which annual statements have been filed in accordance with *The Corporations Tax Act* and *The Insurance Act*, and the amount of the assessment shall be subject to subsection 3.

Preliminary assessment for expense.

Rev. Stat., cc. 72, 183.

Penalty.

(5) Every person who contravenes the provisions of this section shall be guilty of an offence against this Act and shall be liable to the penalty prescribed by section 16. R.S.O. 1937, c. 329, s. 12 (2-5).

Books.

12. The Fire Marshal shall keep such registers and books of account as may be prescribed by the Lieutenant-Governor in Council. R.S.O. 1937, c. 329, s. 13.

Examination
and closing
of premises.

13. The Fire Marshal, Deputy Fire Marshal or any district deputy fire marshal, inspector or municipal fire chief shall have power,

- (a) to enter and examine any premises on which a fire has occurred or on which he has reason to believe there may be any substance or device likely to cause a fire;
- (b) to close any such premises and to prevent entry thereon by any other person for such period as may be required to complete the examination of the premises; and
- (c) to remove from any such premises and to retain and examine any article or material which in his opinion may be of assistance in connection with any matter under investigation. 1944, c. 21, s. 1.

Power to
obtain
evidence.

14. The Fire Marshal, the Deputy Fire Marshal, district deputy fire marshals and inspectors shall have the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and things as is vested in any court in civil cases. R.S.O. 1937, c. 329, s. 14.

Duty of
witnesses
to give
evidence.

15. Every person upon being served with a summons under the hand of the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal or inspector to attend for the purposes of giving evidence shall attend in pursuance of such summons, and shall be entitled to be paid such fees and expenses as are prescribed by the regulations. R.S.O. 1937, c. 329, s. 15.

Penalty.

16. Every person who,

Obstruct-
ing.

- (a) hinders or disturbs the Fire Marshal or any officer appointed under this Act in the execution of his duties;

- (b) violates any of the provisions of this Act or any regulations made thereunder; Contravening Act.
- (c) refuses or neglects to attend and be sworn and give evidence before the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal or inspector; Failure to give evidence.
- (d) refuses or neglects to obey or carry out the instructions or directions of the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal or inspector given under the authority of this Act, Disobedience to orders of Fire Marshal.

shall be guilty of an offence and, where a penalty for such offence is not elsewhere in this Act provided for, on summary conviction, shall be liable to a penalty of not more than \$20, but the imposition of any such penalty or the payment thereof shall not relieve any person convicted from fulfilling any obligation for the neglect of which the penalty was imposed. R.S.O. 1937, c. 329, s. 16.

17.—(1) It shall be the duty of the Crown attorney of every county or district, upon receiving the report of the Fire Marshal or upon receiving notice of any offence having been committed against any of the provisions of this Act or the regulations, to institute and conduct a prosecution of any person who appears to have been guilty of an offence against the *Criminal Code* (Canada) or against this Act or the regulations. Duty of Crown attorney to prosecute. R.S.C. 1927, c. 36.

(2) Upon the request of the Fire Marshal, it shall be the duty of the Crown attorney of the county or district to attend any investigation held under this Act and to examine the witnesses at the investigation and assist the Fire Marshal in the conduct of the investigation. Crown attorney to attend at investigation when requested.

(3) For such services, if the investigation is concluded in one day, the Crown attorney shall be entitled to the sum of \$15 and should the investigation extend beyond one day, \$10 *per diem* for each additional day. Remuneration.

(4) If the investigation is held in any place other than the county or district town, the Crown attorney shall also be entitled to his actual disbursements for travelling and other expenses. R.S.O. 1937, c. 329, s. 17. Travelling expenses, etc., when allowed.

18.—(1) The corporation of every city and town shall provide a suitable place for the holding of investigations and public inquiries by the Fire Marshal or his deputy, and until such place is provided, the investigations and inquiries may City or town to provide place for holding investigation.

be held in the magistrate's court room of the municipality, but at such times as shall not interfere with the use of the court room for the holding of the magistrate's court.

Where city
or town
does not
act.

(2) If a suitable place is not provided by the corporation, the Fire Marshal may procure a suitable place for holding the investigation or inquiry and the expense incurred shall be borne by the corporation. R.S.O. 1937, c. 329, s. 18.

Payment of
fees and
expenses
out of ap-
propriation.

19. The fees and expenses as certified by the Fire Marshal to be payable to the Crown attorney or to witnesses or for assistance given or services rendered to the Fire Marshal under this Act, shall be payable out of such moneys as may be appropriated by the Legislature for salaries and expenses in connection with this Act. R.S.O. 1937, c. 329, s. 19.

Inspection
of buildings
and
premises.

20.—(1) Subject to the regulations, the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal, an inspector or an assistant to the Fire Marshal may, upon the complaint of any person interested, or when he deems it necessary so to do, without such complaint, inspect all buildings and premises within his jurisdiction, and for such purpose may at all reasonable hours enter into and upon the buildings and premises for the purpose of examination, taking with him if necessary, a constable or other police officer or such other assistants as he may deem proper. R.S.O. 1937, c. 329, s. 20 (1); 1944, c. 21, s. 2 (1).

Orders on
inspection.

(2) If, upon such inspection, it is found that a building or other structure is for want of proper repair or by reason of age and dilapidated condition or any other cause especially liable to fire, or is so situated as to endanger other buildings or property, or so occupied that fire would endanger persons or property therein or that exits from the building or buildings are inadequate or improperly used, or that there are in or upon the buildings or premises combustible or explosive materials or conditions dangerous to the safety of the buildings or premises or to adjoining property, the officer making the inspection may order,

- (a) the removal of the buildings or the making of structural repairs or alterations therein;
- (b) the removal of combustible or explosive material, or the removal of anything that may constitute a fire menace;
- (c) the installation of safeguards by way of fire extinguishers, fire alarms and other devices and equip-

ment and also such fire escapes and exit doors as may be deemed necessary to afford ample exit facilities in the event of fire or an alarm of fire. R.S.O. 1937, c. 329, s. 20 (2).

(3) The Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal, an inspector or an assistant to the Fire Marshal may order the removal from any building not being of fire resistive construction or being within fifty feet of any hospital, school, church, theatre or any other place of public assembly or any hotel, apartment house or multiple occupancy dwelling, of any process of manufacture or other occupancy which because of the danger of fire or explosion is especially hazardous to life or property or may order that any such premises shall not be used for any such process or occupancy. 1944, c. 21, s. 2 (2). Removal of process from buildings.

(4) If the occupant or owner of any such buildings or premises deems himself aggrieved by any order made by an officer other than the Fire Marshal made under this section, then in case the order is made under clause *a* of subsection 2, or subsection 3 the person aggrieved may appeal within ten days from the making of the order to the Fire Marshal, who shall examine the order and affirm, modify or revoke the same and cause a copy of his decision to be served upon the party appealing. R.S.O. 1937, c. 329, s. 20 (3); 1944, c. 21, s. 2 (3). Appeal to Fire Marshal from order of subordinate.

(5) If the party appealing is dissatisfied with the decision of the Fire Marshal, he may within five days after the service of the decision, apply by way of originating notice according to the practice of the court, to the judge of the county or district court of the county or district in which the property is situate, for an order modifying or revoking the order or extending the time for compliance therewith, and the judge, upon such application, may affirm, modify or revoke the order and his decision shall be final. Appeal from Fire Marshal to county judge.

(6) If the appeal to the county or district judge is not prosecuted by the appellant within sixty days from the filing of the originating notice, the county or district judge may dismiss the appeal at the request of the Fire Marshal. R.S.O. 1937, c. 329, s. 20 (4, 5). Failure to prosecute appeal.

(7) In the case of an order made under clause *b* or *c* of subsection 2 by an officer other than the Fire Marshal, the occupant or owner shall have the like right of appeal to the Fire Marshal as in the case of an order made under clause *a* of subsection 2, and the decision of the Fire Marshal upon the appeal shall be final and binding and shall not be subject to appeal. R.S.O. 1937, c. 329, s. 20 (6); 1938, c. 12, s. 3. When appeal to Fire Marshal to be final.

Penalties.

(8) Every person who fails to obey an order made under clause *a* of subsection 2 or subsection 3 after the time allowed for appeal therefrom has elapsed, shall be guilty of an offence and shall be liable to a penalty of not less than \$10 in all and not more than \$100 for every day during which such default continues, and every person who fails to obey an order made under clause *b* or *c* of subsection 2 shall be guilty of an offence and shall be liable to a penalty of not less than \$10 in all and not more than \$20 for each day upon which such default continues. R.S.O. 1937, c. 329, s. 20 (7); 1944, c. 21, s. 2 (4).

Manner of collecting.

Rev. Stat.,
c. 379.

(9) Every penalty under subsection 8 shall be recoverable before a magistrate or two or more justices of the peace under *The Summary Convictions Act*, but the imposition of any such penalty or the payment thereof shall not relieve any person convicted from fulfilling any obligation for the neglect of which the penalty was imposed.

Action in absence of owner of premises.

(10) If the owner is absent from or is a non-resident of the Province, or his whereabouts within the Province is unknown, and there is no occupant of the building or premises, or his whereabouts within the Province is unknown, the Fire Marshal may direct and procure,

(a) the removal of the buildings;

(b) the removal of combustible or explosive material, or the removal of anything that may constitute a fire menace,

in such manner as he may deem proper, provided that no expense shall be incurred for such purpose beyond the amount of \$100 without the approval of the Minister.

Expenses, payment;

(11) The expense so incurred shall be paid in the first instance out of any appropriation of the Fire Marshal's office.

collection.

(12) The Fire Marshal shall certify to the treasurer of the municipality within which the building, premises, or structure is situate, the expenses actually and necessarily incurred, and the treasurer shall forthwith pay the amount so certified to the Treasurer of Ontario, and the same may be entered upon the collector's roll against the land or premises in relation to which action was so taken and shall constitute a lien thereon and be levied and collected as taxes against such land or premises. R.S.O. 1937, c. 329, s. 20 (8, 9).

Minor alterations and repairs.

(13) If the owner of a building or premises is absent from or does not reside within the municipality in which the building or premises is situate, or his whereabouts in the

municipality is unknown, the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal, an inspector or an assistant to the Fire Marshal may order the tenant or occupant to make minor alterations or repairs which are urgently required for purposes of fire prevention and the tenant or occupant may deduct the cost of the alterations or repairs from any rent thereafter payable on furnishing the owner with a copy of the order and an accounting of the amount deducted but a tenant or occupant shall not be required to expend or expend in any year an amount in excess of ten per cent of the annual rental payable in respect of such tenancy or occupancy. 1944, c. 21, s. 2 (5).

21.—(1) The Fire Marshal may suspend from duty any district deputy fire marshal or other official for such cause as he may deem sufficient and shall report the suspension immediately to the Minister. Power to suspend deputy or other official.

(2) The pay of such district deputy fire marshal or other official shall not be allowed during the period of suspension, except by order in writing of the Minister. R.S.O. 1937, c. 329, s. 22. Pay to cease during suspension.

22.—(1) Subject to the regulations, the Fire Marshal shall from time to time as may be found necessary for the prevention of fire and for safeguarding human life from the danger of fire, adopt rules and regulations for the use, storage and handling of explosives and volatile compounds, including crude and refined illuminating and fuel oil, and all the devices and apparatus employed in utilizing the same, provided, however, that such rules and regulations shall not be effective until approved by the Lieutenant-Governor in Council. Fire Marshal may adopt rules for prevention of fire.

(2) Where a municipality has passed a by-law under paragraphs 17 to 25 of subsection 1 of section 388 of *The Municipal Act* regulating the keeping and manufacturing of explosives, the requirements of the by-law, if more exacting than those approved by the Lieutenant-Governor in Council under this section, shall govern and apply to properties within the boundaries of the municipality. R.S.O. 1937, c. 329, s. 23. Municipal by-law to take precedence. Rev. Stat., c. 243.

23.—(1) The Lieutenant-Governor in Council may make regulations, Regulations.

- (a) prescribing the respective duties of the Fire Marshal, Deputy Fire Marshal, district deputy fire marshals and inspectors, and of the officers, clerks and servants of the Fire Marshal's office;

- (b) fixing the forms of and particulars to be stated in the records and returns to be made by the Fire Marshal, Deputy Fire Marshal, and district deputy fire marshals, and by every person who may be required under this Act to furnish information to the Fire Marshal;
- (c) requiring any person to furnish such statistical and other information to the Fire Marshal as may be deemed necessary;
- (d) providing for the appointment of an advisory committee the members of which shall serve without remuneration, and defining the duties and powers of such committee; R.S.O. 1937, c. 329, s. 3, cls. (a-d).
- (e) providing for licensing and regulating the manufacture, sale, servicing and recharging of fire extinguishers; 1944, c. 21, s. 3.
- (f) prescribing the methods of fire prevention to be used in any class of premises or premises used for any specified purpose;
- (g) prescribing the types, location and testing of fire-fighting apparatus, equipment and devices and fire alarm systems to be used in any class of premises or premises used for any specified purpose;
- (h) regulating, subject to the *Gasoline Handling Act*, the manner and method of handling and storing flammable liquids or gases in any class of premises or premises used for any specified purpose;
- (i) prescribing the forms, records and returns to be used, kept and made by fire chiefs in respect of their inspections of any class of premises or premises used for any specified purpose;
- (j) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1947, c. 102, s. 2 (2).

Rev. Stat.,
c. 156.

Power
to make
regulations
to prevent
fire.

(2) Without regard to any of the provisions of this Act, and in addition to any of the powers herein granted, the Lieutenant-Governor in Council may make such regulations as may be deemed necessary for preventing and limiting the occurrence of fire and explosion in establishments in which any

liquid or other material of an organic, flammable, or volatile nature (whether produced naturally or synthetically) is used for dry cleaning or dry dyeing purposes, and may provide for the registration and licensing of all such establishments and impose penalties for the breach of any such regulations. R.S.O. 1937, c. 329, s. 21.

24. A certificate under the hand and seal of the Fire ^{Certificate} Marshal of the appointment of any person, made under this ^{of appoint-} Act, shall be received as *prima facie* evidence of the appointment. R.S.O. 1937, c. 329, s. 24.

CHAPTER 141

The Firemen's Exemption Act

1. Whenever any company of firemen has been regularly enrolled in any city, town or place, with the approval of the council of the municipality, the council shall direct the clerk to grant to each member of the company a certificate that he is enrolled in the same, which certificate shall exempt the person named therein, during the period of his enrolment and his continuance in actual duty, from serving as a jurymen or a constable. R.S.O. 1937, c. 281, s. 1, amended.

When firemen to be exempted from serving as jurors and constables.

2. Upon complaint to the council of neglect of duty by any member of such fire company the council shall examine into the same, and for any such cause and also in case any member of the company is convicted of a breach of any of the rules legally made for the regulation of the same, may strike off the name of any such member from the list of the company and thenceforward the certificate granted to the member shall have no effect in exempting him from any duty or service. R.S.O. 1937, c. 281, s. 2.

Forfeiting exemption in case of misconduct.

3.—(1) Where any member of a company of firemen has regularly and faithfully served for seven consecutive years in the same he shall be entitled to receive, upon producing due proof of such service, a certificate from the clerk that he has been regularly enrolled and has served as a member of the fire company for the space of seven years.

Firemen having served seven years entitled to certificate.

(2) Such certificate shall exempt the person named therein from serving as a constable. R.S.O. 1937, c. 281, s. 3, amended.

Exemption from serving as constable.

4.—(1) The council of a city may by by-law enact that when a member of a company of firemen regularly enrolled in the city has regularly and faithfully served in the company for seven consecutive years, the member, upon producing due proof of such service, shall receive a certificate from the clerk that he has been regularly enrolled and has served as a member of the company for the space of seven years.

Powers of a city council as to further exemption.

(2) Such certificate shall exempt the person named therein from the payment of any personal statute labour tax thereafter and from serving as a juror on the trial of any cause in any court. R.S.O. 1937, c. 281, s. 4.

Exemption from statute labour tax, etc.

CHAPTER 142

The Fires Extinguishment Act

1.—(1) The council of a county may provide by by-law that fire guardians, fence-viewers, overseers of highways or pathmasters, appointed by township councils, whenever the woods or prairies in any township are on fire so as to endanger property shall order as many of the male inhabitants of the township residing in the vicinity of the place where the fire is as may be deemed necessary to repair to the place where the fire prevails and assist in extinguishing it or in stopping its progress.

By-law of
county
council
giving
powers.

(2) Where there is no county council the council of any township may pass such by-law. R.S.O. 1937, c. 328, s. 1.

By-law of
township
council.

2.—(1) Every such officer shall give to every person employed by him under section 1 a certificate of the number of days work done by him, and such work shall be allowed to him in his next year's statute labour, or, if such person is not liable to perform statute labour or not so many days statute labour as the number mentioned in the certificate, the council may direct that such work shall be paid for out of the funds of the municipal corporation, and such person shall be entitled to be paid by the township treasurer the amount of the certificate or the amount not credited on the next year's statute labour, as the case may be.

Work done
to be
allowed for
as statute
labour.

(2) The county council may also provide for the application by the township councils of so much of the commutation of statute labour fund as may be required for assisting to extinguish or stop the progress of fires within their respective municipalities. R.S.O. 1937, c. 328, s. 2.

Application
of com-
mutation
fund by
townships.

3. If a township council neglects to provide for the application of so much of the commutation of statute labour fund, or for payment of such amount as may be required for the purposes mentioned in section 2, the county council may do so and may pay the amount of such certificates and impose upon the township so in default a rate sufficient for that purpose to be levied and collected in the manner provided by *The Assessment Act* for the collection of a county rate. R.S.O. 1937, c. 328, s. 3.

Upon de-
fault of
townships,
county may
provide for
payment
of work.

The Rev. Stat.,
c. 24.

Penalty for refusing to assist in extinguishing fires.

4. Every person who refuses or neglects to turn out and work under any fire guardian, fence-viewer, overseer of highways or pathmaster, who has ordered him to turn out for that purpose, shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$20. R.S.O. 1937, c. 328, s. 4.

CHAPTER 143

The Floral Emblem Act

1. The flower known botanically as the "trillium grandiflorum" and popularly known as the "white trillium" shall ^{Floral emblem of} be adopted as and deemed to be the floral emblem of the Province of Ontario. R.S.O. 1937, c. 92, s. 1.

CHAPTER 144

The Forest Fires Prevention Act

INTERPRETATION

1. In this Act,

Interpre-
tation.

- (a) "closed area" means an area closed by the Minister by order under subsection 1 of section 11;
- (b) "Department" means Department of Lands and Forests;
- (c) "fire district" means a part of Ontario declared to be a fire district under section 2;
- (d) "Minister" means Minister of Lands and Forests;
- (e) "municipality" means a city, town, village, township or improvement district;
- (f) "officer" means a person employed or appointed by or with the approval of the Minister to assist in enforcing the provisions of this Act;
- (g) "owner" includes locatee, purchaser from the Crown, assignee, lessee, occupant, purchaser, timber licensee, holder of mining claim or location, and any person having the right to cut timber and wood upon any land;
- (h) "regulations" means regulations made under this Act;
- (i) "travel permit area" means a forest area within a fire district declared to be a travel permit area under section 9. 1948, c. 32, s. 1.

ADMINISTRATION

2.—(1) This Act applies only to fire districts.

Application
of Act.

(2) The Lieutenant-Governor in Council may declare any part of Ontario a fire district.

Creation
of fire
districts.

Right of
action for
damages not
affected.

(3) Nothing in this Act shall affect or be held to limit or interfere with the right of any person to bring and maintain a civil action for damages occasioned by fire. 1948, c. 32, s. 2.

Appoint-
ment of
officers.

3. The Minister may employ, for the purpose of enforcing the provisions of this Act, such officers as he may deem necessary, who shall be subject to his instructions. 1948, c. 32, s. 3.

Honorary
fire
wardens.

4. The Minister may appoint honorary fire wardens who shall,

- (a) be appointed without salary or other remuneration;
- (b) have authority to enforce such of the provisions of this Act as the Minister may deem necessary; and
- (c) wear a special badge to be issued by the Department. 1948, c. 32, s. 4.

Arrange-
ment with
owner for
additional
protection.

5.—(1) Where the owner of any land in a fire district desires to provide protection from fire upon such land in addition to that authorized by the foregoing provisions of this Act, the Minister may arrange with the owner for the appointment of special officers upon such land for the enforcement of this Act and the regulations.

Appoint-
ments.

(2) Every such appointment shall be made or approved by the Minister.

Payment of
special
officers.

(3) Every person appointed under subsection 1 shall be paid by the owner of the land such salary or other remuneration as the Minister may direct or approve. 1948, c. 32, s. 5.

FIRE SEASON

Fire
season.

6. Subject to the regulations, the period from the 1st day of April to the 31st day of October in each year shall be known as the fire season. 1950, c. 79, s. 8 (1).

FIRE PERMITS

Issue of
fire permit.

7.—(1) Upon application, an officer may issue a permit, called a "fire permit", to set out fire during the fire season. 1950, c. 79, s. 8 (2), *part*.

Authority
conferred
by permit.

(2) A fire permit shall be an authority to the permittee to set out fire only in accordance with,

(a) the terms and conditions under which the permit is issued; and

(b) the regulations. 1948, c. 32, s. 7 (2).

(3) No person shall set out fire during the fire season for any purpose, other than cooking or obtaining warmth, except under a fire permit. 1950, c. 79, s. 8 (2), *part*. Prohibition against fire except under permit.

8.—(1) A fire permit may be limited as to duration and area, but in any event shall expire on the 31st day of March next following the date of its issue, and may contain such other terms and conditions as the issuing officer may deem necessary. Limitations in permit.

(2) A fire permit may be cancelled or suspended at any time by an officer, and immediately upon receiving notice of such cancellation or suspension the permittee shall extinguish any fire set out under the permit. 1948, c. 32, s. 8. Cancellation or suspension of permit.

TRAVEL PERMITS

9.—(1) When the Lieutenant-Governor in Council deems it necessary to regulate travel in a forest area within a fire district for the protection of that area, he may declare such forest area a travel permit area. Creation of travel permit areas.

(2) Upon application an officer may issue without charge a permit, called a travel permit. Issue of travel permit.

(3) A travel permit shall be an authority to the permittee to enter and travel about, and to set out fire only for the purpose of cooking or obtaining warmth, in the travel permit area in accordance with, Authority conferred by permit.

(a) the terms and conditions under which the permit is issued; and

(b) the regulations. 1948, c. 32, s. 9 (1-3).

(4) No person shall enter and travel about or set out fire in a travel permit area during the fire season except under a travel permit. 1950, c. 79, s. 8 (3). Prohibition.

10.—(1) A travel permit may be limited as to duration and area but in any event shall expire on the 31st day of March next following the date of its issue, and may contain such other terms and conditions as the issuing officer may deem necessary. Limitations in permit.

Cancellation
or suspension
of permit.

(2) A travel permit may be cancelled or suspended at any time by an officer, and immediately upon receiving notice of such cancellation or suspension, the permittee shall extinguish any fire set by him and shall leave the travel permit area. 1948, c. 32, s. 10.

CLOSED AREAS

Designation
of closed
area.

11.—(1) When the Minister deems it necessary or expedient, owing to extreme fire hazard conditions, to close any area and shut out therefrom all persons except such as are specially authorized by the Minister, he may make an order in writing describing the area to be closed and the period during which such closure shall be in force, and prescribing any other terms and conditions he deems necessary.

Notice of
order.

(2) The Minister shall provide for such notice as he deems necessary under the circumstances, and shall publish a notice of the order setting out the area closed and the period of closure in such newspapers as in his opinion will give the greatest publicity.

Prohibition.

(3) No person, unless specially authorized by the Minister, shall enter a closed area during the period of closure.

Burden of
proof.

(4) In any prosecution under subsection 3 in respect of an offence alleged to have been committed prior to publication of the order under *The Regulations Act*, the burden of proving he did not have actual notice of the order at the time the offence is alleged to have been committed shall be upon the accused. 1948, c. 32, s. 11.

Rev. Stat.,
c. 337.

WORK PERMITS

Work permit
required for
woods and
milling
operations.

12.—(1) Except where land is being cleared for agricultural purposes by a locatee, purchaser or patentee, every person, firm or corporation shall, in addition to any other requirement, obtain from an officer a work permit before,

- (a) carrying on any logging, mining or industrial operation or before clearing land for a right-of-way for any road, trail, tote-road, ditch or flume, or for any telephone, telegraph, power or pipe line, or before clearing land to be flooded for water storage purposes, or before constructing any dam, bridge or camp or before carrying on any other woods operation of any kind liable to cause the accumulation of any slash or debris on any land within a fire district;

- (b) operating in a fire district any mill for the purpose

of manufacturing timber. 1948, c. 32, s. 12 (1);
1949, c. 34, s. 1.

(2) The application for such permit shall be in the pre-^{Description}scribed form, and in addition to any other information in permit, required in the form shall state the location of the proposed operation or mill, the character thereof, the number of men to be employed, the location of camps and the probable duration of the operation.

(3) An officer may in the interest of forest protection,^{Powers of officer.}

(a) refuse the granting of permission for any operation or limit the period during which the operation may be carried on;

(b) require that any permittee carrying on any operation under this section maintain such fire-fighting equipment in good repair and at specified locations as the officer may deem necessary for the control of fires which might be caused either directly or indirectly by the operation;

(c) cancel at any time any permit issued under this section.

(4) Where fire originates in any particular area in which any person either by himself or his employees or someone on his behalf, is carrying on any of the operations referred to in clause *a* or *b* of subsection 1, in the absence of reasonable evidence that the fire may have occurred from causes other than such operations the onus shall be upon that person to prove that the fire did not result from such operations, and in the absence of such proof that person shall bear the full cost of controlling and extinguishing the fire.^{Cost of extinguishing fire.}

(5) A work permit may be limited as to duration and area but in any event shall expire on the 31st day of March next following the date of its issue, and may contain such other terms and conditions as the issuing officer may deem necessary.^{Expiration of permit.}

(6) Where an officer finds any operation mentioned in subsection 1 being conducted without a permit he may give notice that such operation must cease until the necessary permit has been secured, and any person, firm or corporation carrying on an operation after such notice has been given shall in addition to any penalty imposed be subject to a fine of \$25 for each day such operation is continued without a permit.^{Per diem penalty.}

Right to
refuse
permit.

(7) An officer may refuse to issue a permit under this section to any person, firm or corporation convicted of an offence under this section until such time as the said person, firm or corporation has furnished the Department with a bond in such amount and subject to such conditions as may be satisfactory to the officer. 1948, c. 32, s. 12 (2-7).

PREVENTION MEASURES

Power of
officer as
to clearing
of land.

13.—(1) Wherever an officer finds upon the land of any person in a fire district conditions existing which, in his opinion, may cause danger to life or property from fire, he may order the owner or person in control of the land to do what in the opinion of the officer is necessary to remove the danger, and in default may enter upon the land with such assistants as he may deem necessary for the purpose of removing the conditions.

Cost of
work.

(2) The cost of any work done by him or his assistants under subsection 1 shall be borne and paid by the owner or person in control of the lands and shall be recoverable by the Minister by action in any court of competent jurisdiction.

Penalty.

(3) Any person who neglects or refuses to carry out any order given under the authority of subsection 1 shall be guilty of an offence against this Act. 1948, c. 32, s. 13.

Interpre-
tation.

14.—(1) In this section, "owner" means locatee, purchaser from the Crown, assignee, purchaser or occupant.

Action by
municipality
in district.

(2) Where it appears to the council of a municipality in a provisional judicial district that the condition of any land in the municipality or adjacent thereto is by reason of unfinished clearing a source of danger from fire to property in the municipality, the council may cause a statement of the facts to be made to the Minister.

Inquiry into
complaint.

(3) The Minister shall make inquiry as to the conditions described by the council and shall report the result of his inquiry to the council with his recommendation as to what action, if any, should be taken thereon.

Notice to
owner to
clean up
land.

(4) Where the Minister finds that cause for complaint exists owing to the unfinished clearing of land the council may give notice to the owner of the land directing him, within a time to be named in the notice, to properly clear the land or such part thereof or to such extent as the Minister may direct and designate in his report and to remove, as far as possible, all source of danger by fire.

(5) If within the time so fixed the necessary work has not been done, the corporation of the municipality may cause the work to be done and the expenses of the corporation in doing the work shall be a charge upon the land and shall be payable by the owner forthwith.

Default of owner.

(6) If the land is patented and lies in an organized municipality the treasurer of the municipal corporation doing the work shall notify the clerk of the municipality in which the land lies of the amount so due and if after thirty days after the date of the receipt of such notice the amount remains unpaid the corporation of the municipality in which the land lies shall pay the amount to the treasurer of the municipality doing the work and the corporation making such payment may thereupon register or lodge in the proper registry or land titles office, a declaration under the hand of the reeve or other head of the municipality and the treasurer thereof and having the corporate seal affixed thereto, declaring that the municipal corporation claims a lien upon the land for the amount so paid and interest thereon at the rate of six per cent per annum from the date of the declaration.

Recovery of expenses where land is patented in organized territory.

(7) If the land is patented and lies in territory without municipal organization the municipal corporation doing the work may register or lodge in the proper registry or land titles office, a declaration to the same effect as the declaration mentioned in subsection 6 under the hand of the reeve or other head of the municipality and the treasurer thereof and having the corporate seal affixed thereto, stating that the corporation claims a lien upon the land for the amount of such expenses with interest at the rate of six per cent per annum from the date of the declaration.

Where land is patented in un-organized territory.

(8) Upon the registration or filing of the declaration mentioned in subsections 6 and 7, the municipal corporation making the declaration shall have a lien upon the land for the amount claimed and such lien shall have priority according to the general law of Ontario and if the claim remains unpaid for a period of three months after registration and filing the same may be enforced by the sale of the land in the manner provided for in the regulations. 1948, c. 32, s. 14.

Effect of registration.

15. The Minister may enter into such agreement with any municipality as he may deem advisable for the prevention and control of forest fires, and any expenses incurred by the Department in carrying out any such agreement shall be paid out of such moneys as may be appropriated therefor by the Legislature. 1948, c. 32, s. 15.

Agreements with municipalities.

Destruction
of refuse
on land
being
cleared.

16.—(1) Every person clearing land for a right-of-way for any road, trail, tote-road, ditch or flume, or for any telephone, telegraph, power or pipe line, or clearing land to be flooded for water storage purposes, shall, subject to the provisions of this Act respecting fire permits, pile and burn on the land being cleared all refuse, timber, brush or other flammable material cut or accumulated thereon. 1949, c. 34, s. 2.

Flammable
matter near
right-of-way.

(2) Any person who within 300 feet of the right-of-way of any railway causes any accumulation of flammable debris shall at the request of any officer immediately pile and, subject to the requirements of this Act concerning fire permits, burn the debris.

Timber cut
to fall on
owner's
land.

(3) No person shall fell or permit to be felled trees or brush in such manner that such trees or brush fall and remain on land not owned by the person felling or permitting the felling of such trees or brush.

Clearing in
neighbour-
hood of
mills, etc.

(4) Every person having charge of a camp, mine, sawmill, portable or stationary engine using fuel other than oil and located within one-half mile of any forest or woodland shall have the area surrounding the camp, mine, sawmill or engine cleared of flammable material for a distance of at least 300 feet and such further distance as may in the opinion of an officer be required.

Accumula-
tion of
flammable
refuse.

(5) No person shall within one-half mile of any village, town or city accumulate flammable debris or permit any such accumulation to remain on any property owned by him or under his control. 1948, c. 32, s. 16 (2-5).

EXTINGUISHMENT OF FIRES

Duty of
municipal
corporation.

17. The corporation of any municipality within a fire district shall do all necessary things to extinguish grass, brush or forest fires in the municipality, and the costs and expenses thereof shall be borne by the municipal corporation, provided that if the action taken by the municipal corporation in fighting any such fires is in the opinion of an officer not adequate, the officer may do what in his opinion is necessary to control and extinguish such fires, and any costs and expenses incurred by the Department in controlling or extinguishing such fires shall be a debt due by the municipal corporation to the Department and upon presentation of an account of such costs and expenses certified by the Minister, the treasurer of the municipality shall pay the same. 1948, c. 32, s. 17.

Contribu-
tion by De-
partment.

18.—(1) Upon satisfactory proof being furnished by the municipality that any fire has started on Crown land within

the municipality, half of the total cost of extinguishing such fire shall be borne by the Department.

(2) Where any such fire is confined entirely to Crown lands ^{Fires on Crown lands.} other than the lands of an owner as defined by subsection 1 of section 14, the total cost of extinguishing such fire shall be borne by the Department. 1948, c. 32, s. 18.

19.—(1) For the purpose of controlling and extinguishing any fire, an officer may use any privately-owned equipment ^{Right to summon assistance.} and may employ or summon the assistance of any male person between the ages of eighteen and sixty years, excepting only trainmen, boat crews, local telephone operators, telegraphers and despatchers on duty, doctors and persons physically unfit. 1948, c. 32, s. 19 (1); 1949, c. 34, s. 3 (1).

(2) Every person who refuses or neglects to provide any privately-owned equipment or to render assistance when ^{Penalty for refusing to assist.} required under this section shall be guilty of an offence against this Act. 1948, c. 32, s. 19 (2); 1949, c. 34, s. 3 (2).

20.—(1) Every owner, within the meaning of subsection 1 of section 14, of land upon which there is a fire other than, ^{Extinguishment of fires.}

- (a) a fire set out for cooking or obtaining warmth and kept under control; or
- (b) a fire set out under the authority of this Act and kept under control,

shall use all reasonable efforts to extinguish such fire and shall report it without undue delay to an officer, and in any prosecution or action the onus shall be upon him to prove that he used all such reasonable efforts or that he so reported such fire, as the case may be. 1948, c. 32, s. 20 (1); 1949, c. 34, s. 4.

(2) In addition to the other penalties provided by this Act, every owner who violates the provisions of subsection 1 shall be liable for all expenses incurred by the Department in attempting to extinguish such fire upon the land of which he is the owner or upon any land to which it spreads, and the amount thereof shall be recoverable with costs as a debt due by action in any court of competent jurisdiction at the suit of the Minister. 1948, c. 32, s. 20 (2). ^{Expenses incurred in extinguishing fires.}

OFFENCES

21.—(1) During the fire season in any year no person, ^{Offences.} company or corporation in a fire district shall,

Using
engines
without
prescribed
safeguards.

- (a) use or operate within a quarter of a mile of any forest, slashing or bushland any engine which is not provided with a practical and efficient device for arresting sparks, together with an adequate device for preventing the escape of fire or live coals from all ash pans and fire boxes, and which does not comply in every respect with the regulations;

Destroying
waste, etc.,
without
spark
arresters.

- (b) destroy any wood or waste material by fire within any burner or destructor operated at or near any mill or manufactory, or operate any power-producing plant using in connection therewith any smoke-stack, chimney or other spark-emitting outlet, without installing and maintaining on such burner or destructor or on such smoke-stack, chimney or spark-emitting outlet a safe and suitable device for arresting sparks complying in all respects with the regulations. 1948, c. 32, s. 21 (1); 1950, c. 79, s. 8 (4).

Dropping
fire or
live coal.

- (2) No railway company operating within the fire district shall permit fire, live coals or ashes to be deposited on its tracks or right-of-way unless they are extinguished immediately thereafter, except in pits provided for the purpose.

Injunction.

- (3) Notwithstanding the penal provisions of this Act, any court of competent jurisdiction may upon the application of the Minister grant an injunction against the use of any locomotive, engine, burner or destructor until it has been equipped with safety appliances to the satisfaction of the Minister. 1948, c. 32, s. 21 (2, 3).

Duty of
engineer.

22. Every engineer in charge of any engine which is not subject to the jurisdiction of the Board of Transport Commissioners for Canada shall see that all safety appliances required by this Act or by the regulations are properly used and applied, and in default he shall be guilty of an offence against this Act. 1948, c. 32, s. 22.

Particular
offences.

23. No person shall,

- (a) throw or drop any burning match, ashes from a pipe, lighted cigarette, cigar or other burning substance in a fire district without extinguishing it;
- (b) discharge a firearm in a fire district without ensuring that the wadding from the firearm is extinguished;
- (c) without lawful authority, destroy, deface or remove any notice posted under this Act or the regulations; or

- (d) without lawful authority, destroy, damage or remove any equipment placed in the forest for the purpose of protecting the forests from fire. 1948, c. 32, s. 23.

24. Every officer shall have the right while in the performance of his duties to enter into and upon any lands and premises other than a private dwelling, store, storehouse, office or farm building, and every person who hinders, obstructs and impedes any such officer in the performance of his duty shall be guilty of an offence against this Act. 1948, c. 32, s. 24.

Right of officer to enter on premises.

25. Every person using or travelling in the forest shall, upon request, give an officer or other authorized officer of the Crown, information as to his name, address, routes to be followed, location of camps and any other information pertaining to the protection of the forest from fire, and any person who refuses to give such information shall be guilty of an offence against this Act. 1948, c. 32, s. 25.

Information to be given to officer by tourists, etc.

PENALTIES

26.—(1) Every person who disobeys or refuses or neglects to carry out any of the provisions of this Act or any regulation or order made thereunder shall be guilty of an offence and on summary conviction shall be liable to a fine of not less than \$25 and not more than \$300, and in default of payment may be imprisoned for a term of not more than three months, or to imprisonment for a term of not more than three months, or to both fine and imprisonment, and such person shall be liable to the Department for any expenses incurred by it in endeavouring to control or extinguish any fire caused by or resulting from such disobedience, refusal or neglect. 1948 c. 32, ss. 26 (1), 27.

Penalties.

(2) The amount of any expenses for which any person is liable to the Department under subsection 1 shall be recoverable with costs as a debt due by action in any court of competent jurisdiction at the suit of the Minister, provided that where the amount claimed does not exceed \$300 and proceedings are taken under *The Summary Convictions Act* in respect of the disobedience, refusal or neglect, the magistrate, upon making a conviction, may order payment of such amount to the Minister and every such order may be enforced in the same manner as a division court judgment. 1948, c. 32, s. 26 (2).

Expenses, recovery of.
Rev. Stat., c. 379.

REGULATIONS

Regulations. **27.** The Lieutenant-Governor in Council may make regulations,

- (a) extending or restricting the fire season for any fire district or any part of a fire district in any year to such date as may be deemed necessary;
- (b) prescribing forms for use under the Act and the regulations;
- (c) respecting the granting of permits and prescribing the terms and conditions thereof;
- (d) prescribing the precautions to be taken in the use of fire under a permit, and the appliances, implements and apparatus to be kept at hand by the holders of permits;
- (e) prescribing the circumstances and conditions under which fire may be set out or used without a permit, and under which fire may be used out of doors for cooking or obtaining warmth;
- (f) providing for the making of fire guards and the taking of other precautionary measures when the Minister deems danger from fire to any town or settlement specially imminent;
- (g) regulating or preventing the piling or accumulation of brushwood, debris and other flammable material;
- (h) prescribing the use of fire protective appliances on engines, and the precautions to be taken for preventing forest fires being caused by the use and operation of engines;
- (i) prescribing the manner in which land may be sold under subsection 8 of section 14;
- (j) providing for the collection of the cost of any work done by an officer or by a municipal corporation under the authority of this Act in cases not provided for under this Act;
- (k) respecting any other matter necessary or advisable to carry out effectively forest fire prevention and the intent and purpose of this Act. 1948, c. 32, s. 28; 1950, c. 79, s. 8 (5).

CHAPTER 145

The Forest Management Act**1. In this Act,****Interpre-
tation.**

- (a) "annual plan" means a plan furnished under section 3;
- (b) "approved" means approved by the Minister;
- (c) "Crown timber area" means an area on which any of the timber is the property of the Crown whether such area comprises Crown lands, patented lands, or both;
- (d) "master plan" means a plan furnished under section 2;
- (e) "Minister" means Minister of Lands and Forests; 1947, c. 38, s. 1.

2.—(1) Every person who has cutting rights in a Crown timber area shall, when required by the Minister, furnish to him, Inventory and master plan to be furnished.

- (a) an estimated inventory of the timber on the Crown timber area with respect to which he has cutting rights, classifying the timber as to age, species, size and type;
- (b) a proposed master plan for managing the Crown timber area and utilizing the timber thereon;
- (c) a map, which shall form a part of the master plan, dividing the Crown timber area into proposed operational units; and
- (d) a statement of the purposes for which the timber is to be utilized. 1947, c. 38, s. 2 (1); 1949, c. 35, s. 1.

(2) The Minister may approve a master plan as submitted to him or may approve it with such alterations therein as he may deem advisable. Approval of master plan.

Management
of area
according
to plan.

(3) Subject to section 3, a person who has received a request to furnish a master plan shall manage the Crown timber area covered by it and utilize the timber thereon in accordance with the approved master plan.

Master plan
to govern.

Rev. Stat.,
c. 82.

(4) Where conflict exists between an approved master plan and any agreement made or licence granted under *The Crown Timber Act*, the master plan shall govern. 1947, c. 38, s. 2 (2-4).

Information
to be fur-
nished
annually.

3.—(1) Every person who is required to furnish a master plan shall annually furnish to the Minister,

- (a) at least sixty days before cutting operations commence, a plan for cutting operations to be conducted during the twelve-month period commencing on the 1st day of April; and
- (b) on or before the 31st day of October, a map indicating the cut-over areas together with a statement showing the amount, species and size of timber cut from each cutting area during the twelve-month period ending March 31st of that year. 1947, c. 38, s. 3 (1); 1949, c. 35, s. 2.

Alteration
in plan.

(2) The Minister may direct such alteration to be made in an annual plan as he deems advisable and where such alteration involves the alteration of an approved master plan, the master plan shall be deemed to be altered accordingly. 1947, c. 38, s. 3 (2).

Cessation
of cutting
operations.

4. The Minister may direct the cessation of cutting operations until a master plan has been approved. 1947, c. 38, s. 4.

Suspension
or cancella-
tion of
agreement
or licence.

5. Where any person fails to comply with an approved master plan, or fails to comply with section 3, the Minister may suspend or cancel, in whole or in part, the agreement or licence, or both, under which such person derives his cutting rights. 1949, c. 35, s. 3, *part*.

Preserva-
tion of
forests, etc.
Rev. Stat.,
c. 82.

6.—(1) Notwithstanding anything in *The Crown Timber Act*, for the purpose of forest management, watershed protection or fire protection, or the preservation of beauty of landscape, game preserves or game shelters, the Minister may,

- (a) cancel or vary any cutting rights in any area designated by him;

- (b) direct the marking of trees to be left standing or to be cut in any area designated by him, and the cost of such marking and cutting shall be borne by the person holding the cutting rights.

(2) Every order made under this section shall be deemed to be of an administrative and not of a legislative nature. 1949, ^{Nature of orders.}
c. 35, s. 3, *part.*

7. The Lieutenant-Governor in Council may make Regulations, regulations,

- (a) prescribing the manner of preparing and the form of inventories, maps and statements required under this Act and governing the accuracy and verification thereof;
 - (b) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1947, c. 38, s. 6.
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CHAPTER 146

The Forest Resources Regulation Act

1. In this Act,

Interpre-
tation.

- (a) "company" includes every corporation, firm, partnership or individual operating in Ontario and manufacturing mechanical pulp, chemical pulp, paper, lumber, or any other product of the forest;
- (b) "Crown timber" means trees standing, growing or being on ungranted public lands and trees standing, growing or being on other lands where the rights to such trees are reserved in the Crown and includes the timber derived from all such trees until all dues and charges payable under *The Crown Timber Act* have been paid; Rev. Stat.,
c. 82.
- (c) "Department" means Department of Lands and Forests;
- (d) "Minister" means Minister of Lands and Forests.
R.S.O. 1937, c. 40, s. 1.

2. Upon the recommendation of the Minister, the Lieutenant-Governor in Council may make such regulations as may be deemed necessary for the more efficient and economical operation of the forest products industries and for effecting the most advantageous utilization of the timber resources of the Province, and may,

Power of
Lieutenant-
Governor
in Council.

- (a) fix the kinds and quantities of timber which shall be cut, within any stated period, from lands over which any company holds cutting rights granted by the Crown, having regard to the reasonable business requirements of the company, and fix the kinds and quantities of timber cut from such lands which shall be used by the company for conversion into pulp, paper or other products within any stated period;
- (b) increase or reduce the size of the area or areas included in a licence, lease, concession agreement or arrangement, having regard at all times to the maintenance of a sufficient supply of timber for the purposes of the business of the company holding the licence, lease, concession agreement or arrangement;

- (c) exclude any type, size or class of timber from the provisions of a licence, lease, concession agreement or arrangement where, in the opinion of the Minister, the timber is not required for the purposes of the business of the company holding the licence, lease, concession agreement or arrangement;
- (d) limit the cutting of the timber included in a licence, lease, concession agreement or arrangement to such material in respect of the size, age, quality, types and distribution as may be deemed consistent with approved forestry methods;
- (e) increase the stumpage charges payable by any company in respect of timber to be cut during any period from lands over which any company holds cutting rights granted by the Crown and in respect of timber cut from such lands and held, owned or used by the company during any period, to an amount not exceeding five times the stumpage charges where in the opinion of the Lieutenant-Governor in Council the company or any person or corporation employed or controlled by the company is operating or carrying on business in a manner detrimental to the public interest, either in respect of the Crown revenues, the stability of the forest products industries or the maintenance of fair wages and proper labour conditions, and may require the increased stumpage charges to be paid upon demand. R.S.O. 1937, c. 40, s. 2.

Minister
may require
informa-
tion.

3.—(1) The Minister may require any company to furnish to him in writing and under oath such information relating to the utilization, transformation or disposal of timber and the products thereof as he may deem necessary for the purposes of this Act.

Information
to be
furnished.

(2) Notice of such requirement may be forwarded to the company by prepaid registered mail, and the information shall be furnished to the Minister within the time specified in the notice. R.S.O. 1937, c. 40, s. 3.

Provisions
for
violations.

4. Every company that violates any of the provisions of this Act or the regulations shall be liable to a penalty of \$1,000 for every day during which such violation continues in addition to any other penalty or charge imposed by the provisions of this or any other Act and such penalty may be recovered in the manner provided for the recovery of timber dues by *The Crown Timber Act* and the regulations made thereunder. R.S.O. 1937, c. 40, s. 4.

Rev. Stat.,
c. 82.

CHAPTER 147

The Forestry Act

1. In this Act,

Inter-
pretation.

(a) "Minister" means Minister of Lands and Forests;

(b) "lands" includes lands covered with water; all trees and underwood growing upon land; all mines, minerals, gas, oil, salt, quarries and fossils in and under land; the interest in land of a tenant or occupant, and the interest of a holder of any lease, licence, concession, or contract under which there has been acquired from the Crown any right to be exercised in respect of or over or upon land, and all buildings, improvements, structures and fixtures in or on land. R.S.O. 1937, c. 39, s. 1.

2. The Minister may for and in the name of His Majesty lease, purchase or acquire, and, subject as hereinafter mentioned, may without the consent of the owner thereof enter upon, take and expropriate any land in Ontario which the Minister may deem necessary for forestry purposes and may lease, sell or otherwise dispose of the interest of the Province in any land thus leased, purchased, acquired or expropriated, or the timber thereon, and for the purposes of this section the Minister shall have and may exercise the like powers and shall proceed in manner provided by *The Public Works Act* where the Minister of Public Works takes land or property for the use of Ontario and the provisions of that Act shall *mutatis mutandis* apply. R.S.O. 1937, c. 39, s. 2.

Power
to acquire
lands for
forestry
purposes.Rev. Stat.,
c. 323.

3. Lands acquired under this Act shall be under the control and management of the Minister who may develop, protect, care for, and manage the lands and may sell and dispose of any timber which in the opinion of the Minister for any reason should be disposed of. R.S.O. 1937, c. 39, s. 3.

Adminis-
tration and
manage-
ment.

4. For the purposes of reforestation, developing and managing for forestry purposes lands held by other persons, firms, corporations or municipal corporations, the Minister may enter into agreements for such purposes with any such persons, firms, corporations or municipal corporations. R.S.O. 1937, c. 39, s. 4.

Agreements
as to forestry
develop-
ment on
private
lands.

Disposing
of Crown
lands for
forestry
purposes.

5. For forestry purposes the Minister may lease, sell or otherwise dispose of Crown lands and may enter into agreements with reference thereto. R.S.O. 1937, c. 39, s. 5.

Employees.

6. For the purpose of carrying out the provisions of this Act the Minister may employ such persons as he may deem necessary, and they shall be subject to the instructions of the Minister. R.S.O. 1937, c. 39, s. 6.

Appropriation of
funds.

7. All moneys required for the purposes of this Act shall be paid out of such moneys as may be appropriated therefor by the Legislature. R.S.O. 1937, c. 39, s. 7.

Taking
townships
out of
unions.

Rev. Stat.,
c. 243.

8. Notwithstanding *The Municipal Act*, when a township forming part of a union of townships has less than twenty-five resident freeholders whose names are entered on the last revised assessment roll, the Lieutenant-Governor in Council may, for forestry purposes, detach the township from the union of townships, upon such terms as may seem proper, and thereupon the township so detached shall cease to be incorporated and shall not thereafter without the approval of the Lieutenant-Governor in Council, become, be annexed to, or form part of a municipal corporation, and the Order in Council may contain such provisions as may seem proper and necessary for any school section that may be affected by the Order in Council. R.S.O. 1937, c. 39, s. 8; 1946, c. 89, s. 20 (1).

Declaring
incorporated
townships
part of
provincial
forest.

Rev. Stat.,
c. 243.

9. Notwithstanding *The Municipal Act*, where any township has an area of less than ten per cent of the township used for farming purposes the Lieutenant-Governor in Council may, for forestry purposes, declare that the township or such part of the township as may be designated by the Order in Council shall form part of a provincial forest, or be otherwise used for forestry purposes, upon such terms as may be set out in the Order in Council, and for municipal or administrative purposes any balance of the township may be attached to any adjoining township, and the Order in Council may contain such provisions as may seem proper and necessary for any school section that may be affected by the Order in Council. R.S.O. 1937, c. 39, s. 9; 1946, c. 89, s. 20 (2).

Right of
entry for
estimating
natural
resources
of land.

10. For the purpose of making a survey and estimating the timber and other natural resources of the Province, and the adaptability of land for forestry purposes, the Minister may himself or by any officer or person appointed by him for

that purpose, and without the consent of the owner, from time to time, enter into and upon any land to whomsoever belonging, and there investigate and examine the condition of the land for the purposes provided for and intended by this Act. R.S.O. 1937, c. 39, s. 10.

11. Whenever any townships, township, or part of a township have been taken over by the Minister for forestry purposes the Lieutenant-Governor in Council may upon the recommendation of the Minister declare that all the roads, reserves, allowances for roads, or other public lands in such area shall be closed to the public upon such terms and conditions as may seem proper. R.S.O. 1937, c. 39, s. 11.

Power to close roads on lands taken over for forestry.

12. Upon the recommendation of the Minister the Lieutenant-Governor in Council may provide that any township or portion of a township in Ontario suitable for settlement purposes, may be set aside for the purpose of location of settlers whom the Minister may desire to move from locations that have been found to be unsuitable for agricultural purposes, and which it is desired to take over for forestry purposes, and the terms and conditions of location upon such lands may be fixed and determined by the Order in Council. R.S.O. 1937, c. 39, s. 12; 1946, c. 89, s. 20 (3).

Setting apart lands for settlement of settlers removing from unsuitable lands.

13. Whenever in the opinion of the Minister it is found that settlement has taken place on lands not suitable for agricultural purposes and which lands are required for forestry purposes, the Minister shall have power to make arrangements for the removal of the settlers upon such terms as may be agreed upon, and may pay the expenses of the removal of the settlers and their families, chattels and effects to lands designated under section 12 and may enter into agreements with the settlers for the purpose of providing for such removal and for the reconveyance or release of the lands to the Crown. R.S.O. 1937, c. 39, s. 13.

Removal of settlers from lands unsuitable for farming.

14. Whenever in the opinion of the Minister any lands required under this Act, or otherwise, are suitable for the creation of a provincial forest, the Lieutenant-Governor in Council may set apart the lands as a provincial forest under *The Provincial Forests Act*, notwithstanding the fact that the lands may be valuable or used for the preservation or reproduction of timber other than pine. R.S.O. 1937, c. 39, s. 14; 1946, c. 89, s. 20 (4).

Provincial forest, proclamation of.

Rev. Stat., c. 297.

Requiring
permit for
entering
Provincial
Forest.

15. Upon the recommendation of the Minister the Lieutenant-Governor in Council may provide that no person shall enter upon any lands acquired under this Act or lands forming a part of any provincial forest without a permit obtained for that purpose and upon such terms and conditions as may be proper and necessary, and subject to such penalties for a breach of the terms and conditions as may be provided for by the Order in Council. R.S.O. 1937, c. 39, s. 15; 1946, c. 89, s. 20 (5).

Advisory
Committee.

16.—(1) There shall be a committee to be known as the Advisory Committee to the Minister of Lands and Forests consisting of a chairman and eight other members, each of whom shall be appointed by the Lieutenant-Governor in Council for such term as may be specified in the Order in Council.

Interests to
be repre-
sented.

(2) Each of the following interests shall be represented on the Committee: the building industry, education, finance, the forest engineers, labour, the lumber industry, the mining industry, the pulp and paper industry and the railways.

Remunera-
tion and
expenses.

(3) The remuneration and expenses of the members of the Committee shall be paid out of the Consolidated Revenue Fund.

Secretary.

(4) The Committee shall have a secretary who shall be a civil servant and who shall perform such other duties as may be assigned to him.

Meetings.

(5) The Committee shall meet monthly or otherwise as may be agreed upon by the Minister and the Committee.

Duties.

(6) It shall be the duty of the Committee to advise the Minister upon forest policy, either generally or in any particular that may be initiated by the Minister or by the Committee, regard being had to the conservation, development and utilization of the forest resources of Ontario. 1948, c. 33, s. 1.

Regulations.

17. Upon the recommendation of the Minister, the Lieutenant-Governor in Council may make such regulations as he may deem necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1937, c. 39, s. 17.

CHAPTER 148

The Fraudulent Conveyances Act

1. In this Act,

Interpre-
tation.

- (a) "conveyance" includes gift, grant, alienation, bargain, charge, encumbrance, limitation of use or uses of, in, to or out of real property or personal property by writing or otherwise;
- (b) "personal property" includes goods, chattels, effects, bills, bonds, notes and securities, and shares, dividends, premiums and bonuses in any bank, company or corporation, and any interest therein;
- (c) "real property" includes lands, tenements, hereditaments, and any estate or interest therein. R.S.O. 1937, c. 149, s. 1.

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution at any time had or made or at any time hereafter to be had or made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures shall be null and void as against such persons and their assigns. R.S.O. 1937, c. 149, s. 2.

When conveyances declared void as against creditors. 13 Eliz., c. 5, s. 1.

3. Where a conveyance made by a tenant in tail is impeached under section 2, it shall nevertheless be as valid as against the heirs in tail and all persons entitled in reversion or remainder as if this Act had not been passed. R.S.O. 1937, c. 149, s. 3.

Savings as to conveyances made by tenants in tail. 13 Eliz., c. 5, s. 3.

4. Section 2 shall not extend to any estate or interest in real property or personal property conveyed upon good consideration and *bona fide* to any person not having at the time of the conveyance to him notice or knowledge of such intent. R.S.O. 1937, c. 149, s. 4.

Savings as to conveyances made *bona fide* and for good consideration. 13 Eliz., c. 5, s. 5.

5. Section 2 shall apply to all conveyances executed with the intent in that section set forth notwithstanding that the same may be executed upon a valuable consideration and with the intention, as between the parties to the same, of

How far valuable consideration and intent to pass interest to avail.

actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless the same is protected under section 4 by reason of *bona fides* and want of notice or knowledge on the part of the purchaser. R.S.O. 1937, c. 149, s. 5.

When fraudulent conveyances declared void as against purchasers. 27 Eliz., c. 4, s. 1.

6. Every conveyance of real property had or made or at any time hereafter to be had or made with intent to defraud and deceive such person as may have purchased or shall afterwards purchase such real property shall be deemed only as against that person and his assigns, and all persons lawfully claiming under him, or them, who have purchased or shall hereafter purchase for money or other good consideration the same real property or any part thereof to be null and void. R.S.O. 1937, c. 149, s. 6.

Saving as to conveyances made on good consideration. 27 Eliz., c. 4, s. 3.

7. Section 6 shall not extend to or be construed to impeach, defeat, make null or void any conveyance of real property made upon or for good consideration and *bona fide*. R.S.O. 1937, c. 149, s. 7.

Conveyances made revocable of lands afterwards sold for good consideration to be void against the purchaser. 27 Eliz., c. 4, s. 4.

8.—(1) If any person makes a conveyance of real property with any clause, provision, article, or condition of revocation, determination or alteration at his will or pleasure, and after such conveyance bargains, sells, demises, grants, conveys or charges the same or any part thereof to any person for money or other good consideration paid or given, such first conveyance not being by him revoked, made void, or altered according to the power and authority so reserved or expressed therein, then such first conveyance as touching the real property so after bargained, sold, conveyed, demised or charged against the bargainees, vendees, lessees, grantees, their heirs, successors, and their assigns and against every person lawfully claiming under them, shall be null and void.

Saving as to mortgages.

(2) No lawful mortgage made *bona fide*, and without fraud or covin, upon good consideration shall be impeached or impaired by force of this Act, but it shall have the like force and effect as if this Act had not been passed. R.S.O. 1937, c. 149, s. 8.

Validity of voluntary conveyance, etc., executed in good faith and duly registered.

9. Nothing in sections 6 to 8 shall extend to a conveyance which is executed in good faith and duly registered in the proper registry office or land titles office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance to any subsequent purchaser from the same grantor of the same real property or any part

thereof, nor shall the same merely by reason of the absence of a valuable consideration be null and void as against such purchaser or his heirs, executors, administrators or assigns or any person claiming by, from or under any of them. R.S.O. 1937, c. 149, s. 9.

Mere absence
of valuable
considera-
tion.

10. Nothing in section 9 shall have the effect of making valid any instrument which is for any reason, other than or in addition to the absence of a valuable consideration, void under sections 6 to 8 or otherwise; nor have the effect of making valid any instrument as against a purchaser who had before the 28th day of February, 1868, entered into a binding contract for or received his conveyance upon such purchase. R.S.O. 1937, c. 149, s. 10.

Effect of
preceding
section.

CHAPTER 149

The Fraudulent Debtors Arrest Act**1. In this Act,**Interpreta-
tion.

(a) "county" includes district;

(b) "county court" includes district court;

(c) "sheriff" includes any officer to whom an order for arrest is delivered for execution. R.S.O. 1937, c. 128, s. 1.

2.—(1) Where a person by affidavit of himself or some other person shows to the satisfaction of a judge of the Supreme Court or of a county court that he has a cause of action against a person liable to arrest to the amount of not less than \$100, and also such facts and circumstances as satisfy the judge that there is a good and probable cause for believing that such person unless he be forthwith apprehended is about to quit Ontario with intent to defraud his creditors generally or the applicant in particular, the judge may order that the person against whom the application is made shall be arrested and shall give security for such sum as the judge thinks fit.

When order
for arrest of
debtor may
be made.

(2) A judge of a county court may make an order for arrest in the Supreme Court as well as in his own court.

Powers of
county court
judge.

(3) The order may be made as well before as after an action has been commenced.

Order before
action.

(4) Where the order is made before action, unless an action is commenced and notice thereof is given to the sheriff within two days after the date of the order or within such further time as the judge may by the order allow, the order shall be superseded and the person against whom it was made shall, if under arrest, be entitled to be discharged out of custody. R.S.O. 1937, c. 128, s. 2.

When action
to be
brought.

3. An order for arrest shall be in force for two months from the date thereof and no longer; but on the expiration thereof a new order may be obtained in the manner provided by this Act. R.S.O. 1937, c. 128, s. 3.

Term of
validity.

Effect of
orders for
payment.

4.—(1) Every order of the Supreme Court and of a county court directing payment of money or of costs, charges or expenses, so far as it relates thereto, shall be deemed a judgment, and the person to receive payment a creditor, and the person to make payment a debtor, within the meaning of this Act.

Who to be
deemed the
plaintiff,
etc.

(2) Where the judgment or order directs the payment of money into court, or otherwise than to any person, the person having the carriage of the judgment or order, so far as relates to the payment, shall be deemed the person to receive payment or the plaintiff, as the case may be, within the meaning of this Act. R.S.O. 1937, c. 128, s. 4.

Limit of
security in
alimony.

5. Where an order for arrest is made in an action for alimony the amount for which security is to be given shall not exceed what may be considered sufficient to cover the amount of future alimony for two years, besides arrears and costs, but may be for less, at the discretion of the judge. R.S.O. 1937, c. 128, s. 5.

Concurrent
order for
arrest.

6. Concurrent or duplicate orders may be issued from time to time in like manner and form as the original order, and shall be in force for the same period as the original order and no longer. R.S.O. 1937, c. 128, s. 6.

Costs.

7. Unless otherwise ordered the costs of and incidental to an order for arrest shall be costs in the cause. R.S.O. 1937, c. 128, s. 7.

Order and
copies to be
delivered to
sheriff.

8. The order and as many copies thereof as there are persons intended to be arrested thereon shall be delivered to the sheriff, and the plaintiff or his solicitor may direct the sheriff to arrest one or more of the persons there named, which direction shall be obeyed by the sheriff. R.S.O. 1937, c. 128, s. 8.

Time within
which arrests
to be made.

9. The sheriff shall, within two months from the date of the order, but not afterwards, execute the same according to the exigency thereof, and shall upon or immediately after the execution of the same cause one copy thereof to be delivered to the person whom he is directed to arrest, and shall exhibit the original order to him. R.S.O. 1937, c. 128, s. 9.

Indorsement
of date.

10. The sheriff shall, within two days after the arrest, endorse on the order the true date of the arrest. R.S.O. 1937, c. 128, s. 10.

11. No person shall be subject to arrest who, by reason of any privilege, usage or otherwise, is by law exempt therefrom. Privileged persons.
R.S.O. 1937, c. 128, s. 11.

12. No person shall be liable to arrest for contempt for non-payment of any sum of money or of any costs, charges or expenses payable by a judgment or order of the Supreme Court or of a judge thereof, or of a county court or of a judge thereof, and no person shall be liable to arrest for non-payment of costs. Arrest for non-payment of money, costs, etc., abolished.
R.S.O. 1937, c. 128, s. 12.

13. A married woman shall not be liable to arrest on mesne or final process. No married woman to be arrested.
R.S.O. 1937, c. 128, s. 13.

14. The security in the action to be given by the defendant pursuant to the order for arrest may be by payment into court of the amount mentioned in the order, or by a bond to the plaintiff by the defendant and two sufficient sureties, or, with the leave of the judge or officer who allows the bond, either one surety or more than two, or, with the plaintiff's consent, by any other form of security. Security by defendant in action.
R.S.O. 1937, c. 128, s. 14.

15. Where the security is given by bond the condition shall be that the defendant will pay the amount by any judgment in the action adjudged to be recovered or directed to be paid, either as a debt or for damages or costs, or will render himself to the custody of the sheriff of the county in which the action has been commenced or that the sureties will do so for him. Condition of bond.
R.S.O. 1937, c. 128, s. 15.

16. A person who has been indemnified for so doing by a solicitor concerned for the defendant shall not be a surety Persons ineligible as sureties.
in such bond. R.S.O. 1937, c. 128, s. 16.

17. Where the plaintiff's claim exceeds \$4,000 it shall be sufficient for each surety to justify in \$4,000 beyond the amount of the claim. Justification when claim over \$4,000.
R.S.O. 1937, c. 128, s. 17.

18. The bond shall be filed in the office in which the action was commenced, and may be allowed by the proper officer in such office or by the local judge or master upon service upon the plaintiff or his solicitor of notice of the filing of the bond and of the names and addresses of the sureties and a copy of an appointment from such officer, local judge, or master at Allowance of bond.

least forty-eight hours, unless otherwise directed by the officer, judge or master, before the time named in the appointment. R.S.O. 1937, c. 128, s. 18.

Security by
payment
into court.

19.—(1) Where security is desired to be given by payment of money into court the same may be paid in without an order, and shall stand as security to the plaintiff that the defendant will pay the amount by the judgment in the action adjudged to be recovered or directed to be paid either as a debt or for damages or costs, or will render himself to the custody of the sheriff of the county in which the action has been commenced.

Substitution
of other
security
after pay-
ment into
court.

Repayment
of money
paid in.

(2) After the payment of money into court, a bond or other security in section 14 mentioned may be substituted therefor, and the money paid in shall be repaid upon the production of a certificate of the allowance of the bond or other security signed by the officer allowing the same or by the plaintiff's solicitor. R.S.O. 1937, c. 128, s. 19.

Control of
court.

20.—(1) The money paid in and the security and all proceedings thereon shall be subject to the order and control of the court or a judge.

Discharge of
defendant on
giving
security.

(2) The delivery to the sheriff executing the order for arrest of a certificate of the Accountant of the Supreme Court of the payment of the money into court, or of a certificate of the allowance of the bond or other security signed by the officer allowing the same, or by the plaintiff or his solicitor, to the sheriff, shall entitle the defendant to be discharged out of custody. R.S.O. 1937, c. 128, s. 20.

Time for
delivery of
statement of
claim.

21. Where a defendant is taken or detained in custody under an order for arrest in default of giving security, the plaintiff, if he has not already delivered his statement of claim, shall deliver the same within one month after the arrest, or within the time prescribed by the rules of the Supreme Court, whichever shall be the earlier date, otherwise the defendant shall, unless further time is allowed by the court or a judge, be entitled to be discharged out of custody. R.S.O. 1937, c. 128, s. 21.

Order to
bring body
into court.

22.—(1) Where, on the expiration of an order to return an order for arrest, the sheriff returns *cepi corpus* thereon, an order may thereupon issue requiring the sheriff, within six days after the service of the order, to bring the defendant into court, by bringing in the body or by causing security in

the action to be given and, if the sheriff does not obey the order, an attachment may be granted for disobedience thereto.

(2) Where a sheriff, before going out of office, makes an arrest, and takes security under the order for arrest and makes a return of *cepi corpus*, the order shall, within the time allowed by law, be directed to him notwithstanding that he may be out of office before the order is issued. R.S.O. 1937, c. 128, s. 22. Where sheriff goes out of office.

23. An order shall not be made for setting aside an attachment regularly obtained against a sheriff for not bringing in the body, or for staying proceedings regularly commenced on the assignment of a bail bond, unless the application for the order, if made on the part of the original defendant, be grounded on an affidavit of merits, or, if made on the part of the sheriff, or a surety, or any officer of the sheriff, unless the application be grounded on an affidavit showing that the application is really and truly made on the part of the sheriff, or surety, or officer of the sheriff, as the case may be, at his own or their own expense, and for his or their indemnity only, and without collusion with the original defendant. R.S.O. 1937, c. 128, s. 23. Order to set aside attachment or stay proceedings on bond, affidavit of merits, etc.

24.—(1) A person arrested upon an order for arrest may apply to the court or a judge for an order that he be discharged out of custody, and the court or judge, subject to appeal, may make such order thereon as may seem just. Application for discharge from custody by defendant.

(2) A judge of a county court making an order for arrest, whether in the Supreme Court or in his own court, shall, in respect to such order and the arrest made thereupon, possess all the powers of a judge of the Supreme Court under this section, and may in like manner, on application to him, order the defendant to be discharged out of custody, or make such order therein as to him seems just. Powers of county court judge.

(3) Any such order made by a judge of the county court may be discharged or varied by the Court of Appeal. R.S.O. 1937, c. 128, s. 24. Discharge or variance of order.

25. Where the defendant is described in the order for arrest, or affidavit therefor, by initials, or by wrong name, or without a Christian name, he shall not for that cause be discharged out of custody, or the security be delivered up to be cancelled. R.S.O. 1937, c. 128, s. 25. Misnomer of defendant in order for arrest.

Surrender of
debtor by
sureties.

26.—(1) The sureties may at any time surrender their principal to the sheriff of the county in which the principal is resident or found, and the sheriff shall receive the principal into his custody, and give the sureties a certificate under his hand and seal of office of the surrender, for which certificate he shall be entitled to the sum of \$1.

Order to
cancel secur-
ity and dis-
charge of
sureties.

(2) A judge of the court in which the action is pending, upon proof of due notice to the plaintiff or his solicitor of the surrender, and upon production of the sheriff's certificate thereof, shall order the security to be cancelled, and thereupon all sureties shall be discharged.

Transfer of
person
arrested out
of his county.

(3) Where a person is surrendered by his sureties to the sheriff of any county other than that in which he resides or carries on business he shall be entitled to be transferred to the jail of his own county on prepaying the expenses of his removal, and the sheriff in whose county he was arrested may transfer him accordingly; but, if the sheriff declines to act without an order of the court or a judge, such order may be made on the application of the person arrested, upon notice to the opposite party. R.S.O. 1937, c. 128, s. 26.

When *ca. sa.*
may issue
without
order.

27.—(1) Where a defendant has been arrested and has given security in the action pursuant to the order for arrest, or is imprisoned or detained in custody in default of giving security, unless he has been discharged under section 52, any judgment which the plaintiff may obtain in the action may be enforced by writ of *capias ad satisfaciendum* without an order therefor; but where the defendant is so imprisoned or detained in custody the plaintiff shall issue such writ within fourteen days after he has become entitled to enter final judgment.

When order
for *ca. sa.*
necessary.

(2) Where the defendant has not been arrested, or has been discharged under section 52, if the plaintiff, by the affidavit of himself or of some other person shows to the satisfaction of a judge of the Supreme Court or, where the action is in a county court, to a judge of such court, that he has recovered judgment against the defendant for not less than \$100, exclusive of costs, and also such facts and circumstances as satisfy the judge that there is good and probable cause for believing either that the defendant, unless he be forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally or the plaintiff in particular, or that the defendant has parted with his property or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution, the judge may order that a writ of *capias ad satisfaciendum* be issued.

(3) Every writ of *capias ad satisfaciendum* against a debtor who has not been previously arrested or who has not given security pursuant to an order for arrest shall be returnable immediately after the execution thereof, and shall continue in force for two months from the day of the issue thereof, and no longer, but on the expiration thereof another writ may be obtained from a judge's order as provided by subsection 2. R.S.O. 1937, c. 128, s. 27.

Ca. ss. when returnable.

28.—(1) A writ of *capias ad satisfaciendum*, issued for the purpose of fixing the liability of the sureties, shall be returnable on a day certain to be named therein not later than fourteen days from the date of the teste of the writ, and shall be delivered to the sheriff of the county in which the action was commenced eight clear days before the return day so named.

Ca. ss. to fix liability of sureties.

(2) The sureties shall take notice of the delivery of the writ, and it shall not be necessary for the plaintiff to give them any further or other notice thereof. R.S.O. 1937, c. 128, s. 28.

Duty of sureties.

29.—(1) An action shall not be brought upon the bond or other security given in an action pursuant to an order for arrest until after the return of a writ of *capias ad satisfaciendum* for the purpose of fixing the liability of the sureties.

Postponement of action on security.

(2) To such a writ the sheriff may return *non est inventus*, without taking any steps to arrest the defendant, unless he is already in, or is rendered into, his custody. R.S.O. 1937, c. 128, s. 29.

Return to writ.

30. In an action upon the bond the sureties shall only be liable for the amount recovered by the plaintiff in the action in which the bond was given, and the costs of suit, not exceeding in the whole the amount of the penalty in the bond. R.S.O. 1937, c. 128, s. 30.

Limitation of liability of sureties.

31.—(1) Subject to section 26, where the plaintiff brings an action on the bond or other security, the sureties shall be at liberty to satisfy the bond or security by rendering their principal to the custody of the sheriff of the county in which the action was brought at any time within eight days next after service of the writ of summons upon them, but not at any later period, and, upon notice thereof being given to the plaintiff or his solicitor, the action shall be stayed and the plaintiff shall be entitled to the costs of the action up to the date of service of the notice.

Sureties' right to surrender their principal.

Costs.

(2) Such costs may be taxed upon production of the notice so served without an order, and if not paid within four days from taxation the plaintiff may, without an order, sign judgment therefor. R.S.O. 1937, c. 128, s. 31.

Delay of 24 hours before committal.

32. The sheriff, at the request of the person arrested, and upon being prepaid a sum of money sufficient to cover the sheriff's reasonable fees and expenses incident to the delay, shall grant to such person a delay of twenty-four hours after the arrest before committing him to jail, and shall take him for the twenty-four hours to some safe and convenient house in his county. R.S.O. 1937, c. 128, s. 32.

Right of person arrested to be transferred to jail of his own county.

33. A person arrested and imprisoned in any other county than that in which he resides or carries on business, shall be entitled to be transferred to the jail of his own county, on prepaying the expenses of his removal, and the sheriff in whose county he was arrested may transfer him accordingly; but if the sheriff declines to act without an order of the court or a judge, such order shall be made on the application of the person arrested, upon notice to the opposite party. R.S.O. 1937, c. 128, s. 33.

Security from debtors in custody.

34.—(1) At any time before the expiration of ten days from the date of the arrest the defendant shall be entitled to be released from custody upon paying into court, without special order, the amount named in the order for arrest, together with \$40, to answer the costs which may have accrued up to the time limited for giving security in the action pursuant to the order for arrest, or upon giving to the sheriff a bail bond, with two sufficient sureties in a penal sum double the amount named in the order for arrest, and upon payment of the sheriff's fees, including the cost of the bond.

Custody of money paid.

(2) Money so paid into court shall remain in court subject to order of the court or a judge, as security to the plaintiff that the defendant will cause security in the action to be given pursuant to the order for arrest. R.S.O. 1937, c. 128, s. 34.

Security from debtors in custody.

35. The sheriff may take from a debtor confined in the jail of his county upon mesne process a bond, with not less than two and not more than four sufficient sureties, to be jointly and severally bound in a penal sum of double the amount for which the debtor is so confined, conditioned that the debtor will observe and obey all notices or orders of court touching or concerning the debtor, or his appearing to be

examined *viva voce*, or his returning and being remanded into close custody, and that upon reasonable notice to them or any of them requiring them so to do they will produce the debtor to the sheriff, and also the debtor will, within thirty days, cause the bond, or the bond that may be substituted for the same according to the provisions hereinafter contained, to be allowed by the judge of the county court of the county wherein the debtor is confined, and the allowance to be endorsed thereon by the judge. R.S.O. 1937, c. 128, s. 35.

36. The sheriff may also require each surety, where there are only two, to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Ontario (stating where), and is worth the sum for which the debtor is in custody (naming it) and \$200 more, over and above what will pay all his debts, or, where there are more than two sureties, then he may require each surety to make oath as aforesaid, that he is a freeholder or householder as aforesaid, and is worth one-half the sum for which the debtor is in custody (naming it), and \$200 more, over and above what will pay all his debts. R.S.O. 1937, c. 128, s. 36.

37. Upon receipt of the bond, accompanied by an affidavit of a subscribing witness of the due execution thereof, and by the sureties' affidavits of sufficiency, if required by the sheriff, the sheriff may permit and allow the debtor to go out of close custody, and so long as the debtor in all respects observes the conditions of the bond, the sheriff shall not be liable to the party at whose suit the debtor is confined in any action for the escape of the debtor from jail. R.S.O. 1937, c. 128, s. 37.

38.—(1) The debtor may apply for the allowance of the bond upon four clear days' notice in writing to the plaintiff or his solicitor, who at the time of the application may object to the sufficiency of the sureties, and if the judge refuses to allow the bond, the debtor may cause another bond, made to the sheriff in the same terms and under the same conditions, to be executed without further application to the sheriff, and may apply in like manner and upon like notice for the allowance thereof, and the bond, if allowed and endorsed as aforesaid, shall be substituted for and have the like effect in all respects as the bond first given to the sheriff would have had upon the allowance thereof and the like remedies may be had thereon, and the first given bond shall thereupon become void.

(2) The sheriff shall, upon reasonable notice given by the debtor, cause the bond to be produced before the judge. R.S.O. 1937, c. 128, s. 38.

Sheriff's discharge from responsibility.

39. Upon the allowance being so endorsed the sheriff shall be discharged from all responsibility respecting the debtor, unless he is again committed to the close custody of the sheriff in due form of law. R.S.O. 1937, c. 128, s. 39.

Deposit in lieu of bail on arrest under civil process.

40. In lieu of giving the bond provided for by section 35 the debtor or any person on his behalf may deposit with the sheriff the amount for which he is arrested, and, where the person is held under an order for arrest, the further sum of \$40, and such deposit shall stand as security in place and for the purposes of the bond provided for by sections 34 and 35, and the money so deposited shall be subject to the order of a judge of the court in which the order of arrest was made, but such deposit shall be repayable to the person making it upon the sheriff being furnished with a certificate of the judge or officer who allows the same, that the bond provided for by sections 34 and 35 has been perfected and allowed. R.S.O. 1937, c. 128, s. 40.

Retaking the debtor if sureties become insufficient.

41.—(1) Where the sheriff has good reason to apprehend that a surety after entering into the bond has become insufficient to pay the amount sworn to in his affidavit of sufficiency the sheriff may again arrest the debtor, and detain him in close custody, and such arrest shall discharge the sureties from all liability on the bond.

Effect of such arrest on liability of sureties.

(2) The sureties of the debtor may set up the arrest and detention as a defence to an action brought against them upon the bond entered into by them, and the defence, if sustained in proof, shall wholly discharge them.

New bond.

(3) The debtor may again be allowed to go out of close custody on giving to the sheriff a new bond with sureties as aforesaid. R.S.O. 1937, c. 128, s. 41.

Assignment of bail bond.

42.—(1) Where default is made in compliance with the conditions of a bail bond to the sheriff the sheriff shall, upon the request and at the cost of the plaintiff, assign the bond to him, and he may bring an action thereon in his own name.

Discharge of sheriff's liability.

(2) Upon executing the assignment the sheriff shall thenceforth be discharged from all liability on account of the debtor or his safe custody.

Rearrest in default of security in action.

(3) Where the bond is taken under section 34, if the plaintiff does not take an assignment of it within five days after default, the sheriff may rearrest the defendant in any county

and bring him into his own county and detain him in custody until he has given and obtained the allowance of security in the action—pursuant to the order for arrest. R.S.O. 1937, c. 128, s. 42.

43. Notwithstanding the default the defendant may, at any time before judgment in an action brought upon the bail bond to the sheriff or before the expiration of any order to bring in the body, give security in the original action pursuant to the order for arrest. R.S.O. 1937, c. 128, s. 43.

Defendant's
right to give
security
preserved.

44. The plaintiff shall not be at liberty to proceed upon the bail bond to the sheriff pending an order to bring in the body of the defendant. R.S.O. 1937, c. 128, s. 44.

Stay of
action on
bail bond.

45. Where an action is brought upon the bail bond to the sheriff the court or a judge may upon application in such action give such relief to the plaintiff and defendant in the original action and to the sureties in the bail bond as may be just and reasonable, and the order made on any such application shall have the effect of a defeasance to the bail bond. R.S.O. 1937, c. 128, s. 45.

Power of
court to
relieve.

46.—(1) The sureties of a debtor may surrender him into the custody of the sheriff at the jail, and the sheriff or jailer shall there receive him into custody, and the sureties may set up the surrender, or the offer to surrender and the refusal of the sheriff or jailer to receive the debtor into custody at the jail, as a defence to any action brought on the bond for a breach of the condition happening after such surrender or tender and refusal, and the defence, if sustained in proof, shall discharge them.

Surrender
by sureties.

(2) The debtor may again be allowed to go out of close custody on giving to the sheriff a new bond with sureties as aforesaid. R.S.O. 1937, c. 128, s. 46.

New bond.

47.—(1) The party at whose suit a debtor has been confined in execution may, at any time while the debtor is at large upon bail, apply to the court or a judge for an order for the examination *viva voce* on oath of the debtor touching the matters mentioned in section 51, and if the debtor does not submit himself to be examined pursuant to the order or refuses to make full answer in respect to the matters touching which he is examined to the satisfaction of the court or a judge, the court or judge may order the debtor

Debtor on
bail liable
to be
examined or
re-committed.

to be committed to close custody, and the sheriff, on due notice of the order, shall forthwith take the debtor and commit him to close custody until he obtains an order of the court or a judge for again allowing him to go out of close custody, on giving the necessary bond as aforesaid, or until he is otherwise discharged in due course of law.

Order for discharge.

(2) An order for the discharge of the debtor may be made on his showing that he has submitted himself to be examined and made full answer as aforesaid and has thereafter given to the plaintiff or his solicitors five days' notice of his intention to apply. R.S.O. 1937, c. 128, s. 47.

Proceedings under bailable process in case of dissolution of a union of counties.

48.—(1) Where a union of counties is dissolved or a county is separated from a union of counties a person arrested, or who has given security in the action before the separation or dissolution and is liable to be imprisoned, shall be imprisoned in the jail of the county in which he was arrested.

Further proceedings, where to be carried on.

(2) All proceedings in the action, and all proceedings after judgment founded on the arrest or the security given, shall be carried on as if the arrest had taken place or the security had been given in such county as a separate county, and all the records and papers relating to the action shall be transmitted to the proper officer of the county in which the debtor was arrested.

Jail for debtor where united counties dissolved.

(3) Where a debtor or other person is admitted to bail in a union of counties, and the union is afterwards dissolved, or one or more counties are separated therefrom, and such person is afterwards surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the sheriff of the county in which he was arrested, and be imprisoned in the jail thereof. R.S.O. 1937, c. 128, s. 48.

Sheriff's liability for escape.

49. If a debtor in execution escapes out of legal custody, the sheriff, bailiff, or other person having the custody of the debtor, shall be liable only to an action for damages sustained by the person at whose suit the debtor was taken or imprisoned, and shall not be liable to any other action in consequence of the escape. R.S.O. 1937, c. 128, s. 49.

Discharge of debtor from custody.

50. A debtor in close custody in execution or on mesne process, and a debtor arrested under a writ of *capias ad satisfaciendum*, though he is not in close custody but has given bail, may, after giving to the person at whose instance he is in close custody or has been so arrested ten days' notice

in writing of his intention to do so, apply to the court or a judge to be discharged. R.S.O. 1937, c. 128, s. 50.

51. Where the notice is given by a debtor in close custody in execution or by a debtor who has been arrested under a writ of *capias ad satisfaciendum* and has given bail, the person at whose instance he is in close custody or has been so arrested may apply to the court or a judge for an order that the debtor be examined *viva voce* on oath for the purpose of discovering any property or effects which he is possessed of or entitled to, or which are in the possession or under the control of any other person for the use or benefit of the debtor, or which the debtor having been in possession of may have fraudulently disposed of for the purpose of hindering, delaying, defrauding or defeating his creditors, and touching the debtor's estate and effects and the circumstances under which he contracted the debt or incurred the liability which was the subject of the action in which judgment has been recovered against him, and as to the means and expectations he then had, and as to the property and means he still has, and as to the disposal he may have made of any of his property. R.S.O. 1937, c. 128, s. 51.

Examination
of debtor as
to his
property,
etc.

52.—(1) Upon an application under section 50, and upon the debtor making oath that he is not worth \$20 exclusive of his goods and chattels exempt from seizure under execution, and, in the case of a debtor in execution, that he has submitted himself to be examined pursuant to any order which may have been made for his examination, or that no order for his examination has been served, and where such examination has been had, if the matter thereof is deemed satisfactory, and, in the case of a debtor confined in close custody on mesne process, that he does not believe the demand of the plaintiff to be just and for that reason and no other resists payment of it and refuses to suffer judgment to be entered against him for the sum sworn to, and if the cross examination, if any, of the debtor upon his affidavit is deemed satisfactory, the debtor shall be discharged from custody, but the discharge shall not be a release or satisfaction of the judgment or of the claim of the plaintiff or deprive the plaintiff of any remedy against the debtor or his property.

Application
of debtor for
discharge,
effect of
discharge.

(2) A debtor in close custody upon mesne process may be cross examined upon his affidavit according to the practice of the court as to cross examination upon an affidavit on a motion. R.S.O. 1937, c. 128, s. 52.

Cross exam-
ination of
debtor on
affidavit.

Discharge may be on condition of assignment by debtor.

53. In the case of a debtor in execution it may be made a condition of his discharge that he shall first, by assignment or conveyance to be approved of by the court or a judge, assign and convey to an assignee for the benefit of his creditors any right or interest he may have in and to any property real or personal, credits or effects, other than goods and chattels exempt from seizure under execution, and in the case of a debtor in close custody on mesne process it may be made a condition of his discharge that he shall first suffer the plaintiff to have judgment against him for the sum sworn to or such part thereof as to the court or judge may seem just. R.S.O. 1937, c. 128, s. 53.

Remand into custody in cases of fraud, etc.

54. In the case of a debtor in execution, if it appears that the debt for which he is in close custody or has been arrested was contracted by fraud, or breach of trust, or under false pretences, or that he wilfully contracted the debt without having had at the time a reasonable expectation of being able to pay or discharge it and with intent to defraud, the court or judge may order the debtor to be remanded into close custody for any period not exceeding twelve months and to be then discharged. R.S.O. 1937, c. 128, s. 54.

Debtor's liability to be retaken in execution.

55. Where the discharge has been unduly or fraudulently obtained by a false allegation of circumstances which, if true, would have entitled the debtor to be discharged, he shall, upon the same being made to appear to the satisfaction of the court or a judge, be liable to be again taken in execution or remanded to his former custody by order of the court or judge. R.S.O. 1937, c. 128, s. 55.

Production of debtor for examination.

56. The court or judge making an order for the examination of a debtor under this Act may direct the sheriff or jailer having the custody of the debtor to bring him before the court or judge or before some person to be named in the order for the purpose of being examined, and the sheriff or jailer shall take the debtor before the court or judge or the person so named for examination in the same manner as if the sheriff or jailer were acting in obedience to a writ of *habeas corpus ad testificandum*. R.S.O. 1937, c. 128, s. 56.

Discharge by consent of plaintiff.

57. A written order under the hand of the judgment creditor or of the solicitor by whom a writ of *capias ad satisfaciendum* has been issued shall justify the sheriff, jailer or officer in whose custody the debtor is under the writ, in discharging him, unless, where the order is given by the solicitor, the party for whom such solicitor professes to act has given written notice to the contrary to the sheriff, jailer or officer

but such discharge shall not be a satisfaction of the debt, and nothing herein contained shall justify the solicitor in giving an order for discharge without the consent of his client. R.S.O. 1937, c. 128, s. 57.

58. Neither the taking of a debtor in execution under a writ of *capias ad satisfaciendum* nor his imprisonment there-^{When plaintiff may issue other writs.} under or under this Act nor his discharge from custody, by the voluntary action of his creditor or under the powers conferred by this Act, shall operate as a satisfaction or extinguishment of the debt or deprive the creditor of the right to take out execution or other process against the property of the debtor or to take any other proceeding against him in the same manner as if the debtor had not been taken in execution or discharged out of custody. R.S.O. 1937, c. 128, s. 58.

59. *The Judicature Act* and rules of court shall apply to this Act. R.S.O. 1937, c. 128, s. 59. ^{Application of Rev. Stat., c. 190.}

CHAPTER 150

The Fruit Packing Act

1. In this Act,

Interpretation.

- (a) "association" means any association of fruit growers incorporated as an association under *The Companies Act* for the purpose of marketing fruit and composed of not less than ten fruit growers who together hold at least one hundred acres of land and have contracted to market their fruit through such association. R.S.O. 1937, c. 86, s. 1. Rev. Stat., c. 59.

- (b) "Minister" means Minister of Agriculture. R.S.O. 1937, c. 86, s. 1.

2. The Lieutenant-Governor in Council upon the recommendation of the Minister may make a grant out of such moneys as may be appropriated by the Legislature for that purpose to any association in accordance with this Act for the purpose of acquiring, erecting or equipping buildings necessary for the proper grading, packing and storing of the fruits grown by the members of the association. R.S.O. 1937, c. 86, s. 2. Grant for erecting packing houses.

3. Such grant shall not exceed twenty-five per cent of the appraised value of the buildings upon which the grant is to be made, or a total of \$1,500 in any one case. R.S.O. 1937, c. 86, s. 3. Grant not to exceed twenty-five per cent of appraised value.

4. The plans and location of the buildings must be approved by the Minister before a grant is paid. R.S.O. 1937, c. 86, s. 4. Approval of plans and location.

5. Buildings on which a grant is paid under this Act shall be vested in the association, but no such building shall be disposed of by any association without the consent of the Minister. R.S.O. 1937, c. 86, s. 5. Right of ownership.

6. The control and management of the buildings erected under this Act shall be vested in the association and the association may fix charges and adopt regulations for the proper conduct of the work and shall accept fruit for grading, packing or storage from growers, who are not members of the Use of building by outside growers.

association, on such terms as may seem reasonable. R.S.O. 1937, c. 86, s. 6.

Annual
statement
submitted
to Minister.

7. The association shall at least once in every year, and whenever called upon to do so by the Minister, transmit to the Minister a general statement of the funds and effects of the association, the number of members or shareholders therein, and such other information as may be requisite to show clearly the position of the association and the business done during the year, which return shall be certified by the president and secretary as being correct. R.S.O. 1937, c. 86, s. 7.

Repayment,
effect of.

8. Upon repayment of the amount of the grant by any association, such association shall be relieved of all the conditions and limitations otherwise imposed by this Act. R.S.O. 1937, c. 86, s. 8.

Powers of
Minister.

9. The Minister may decide all matters of doubt or dispute as to the working of the association or the construction of this Act, and his decision shall be final, except that an appeal therefrom may be made to the Lieutenant-Governor in Council. R.S.O. 1937, c. 86, s. 9.

CHAPTER 151

The Frustrated Contracts Act

1. In this Act,

Interpre-
tation.

- (a) "contract" includes a contract to which the Crown is a party;
- (b) "court" means the court or arbitrator by or before whom a matter falls to be determined;
- (c) "discharged" means relieved from further performance of the contract. 1949, c. 36, s. 1.

2.—(1) This Act applies to any contract governed by the law of Ontario whether made before or after the 1st day of June, 1949, that after the 1st day of June, 1949, has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged.

Application
of Act.

(2) This Act does not apply,

Exceptions.

- (a) to a charterparty or a contract for the carriage of goods by sea, except a time charterparty or a charterparty by way of demise;
- (b) to a contract of insurance; or
- (c) to a contract for the sale of specific goods where the goods, without the knowledge of the seller, have perished at the time when the contract is made, or where the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer. 1949, c. 36, s. 2.

3.—(1) The sums paid or payable to a party in pursuance of a contract before the parties were discharged,

Adjustment
of rights and
liabilities,

- (a) in the case of sums paid, are recoverable from him as money received by him for the use of the party by whom the sums were paid; and
- (b) in the case of sums payable, cease to be payable.

payments;

expenses;

(2) If, before the parties were discharged, the party to whom the sums were paid or payable incurred expenses in connection with the performance of the contract, the court, if it considers it just to do so having regard to all the circumstances, may allow him to retain or to recover, as the case may be, the whole or any part of the sums paid or payable not exceeding the amount of the expenses, and without restricting the generality of the foregoing the court, in estimating the amount of the expenses, may include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the party incurring the expenses.

benefits;

(3) If, before the parties were discharged, any of them has, by reason of anything done by any other party in connection with the performance of the contract, obtained a valuable benefit other than a payment of money, the court, if it considers it just to do so having regard to all the circumstances, may allow the other party to recover from the party benefited the whole or any part of the value of the benefit.

assumed
obligations;

(4) Where a party has assumed an obligation under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court, if it considers it just to do so having regard to all the circumstances, may for the purposes of subsection 3 treat any benefit so conferred as a benefit obtained by the party who has assumed the obligation.

insurance;

(5) In considering whether any sum ought to be recovered or retained under this section by a party to the contract, the court shall not take into account any sum that, by reason of the circumstances giving rise to the frustration of the contract, has become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

special
contractual
provisions;

(6) Where the contract contains a provision that upon the true construction of the contract is intended to have effect in the event of circumstances that operate, or but for the provision would operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the provision and shall give effect to this section only to such extent, if any, as appears to the court to be consistent with the provision.

(7) Where it appears to the court that a part of the contract can be severed properly from the remainder of the contract, ^{where contract severable.} being a part wholly performed before the parties were discharged, or so performed except for the payment in respect of that part of the contract of sums that are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract that had not been frustrated and shall treat this section as applicable only to the remainder of the contract. 1949, c. 36, s. 3.

CHAPTER 152

The Fuel Supply Act

1. In this Act,Interpreta-
tion.

- (a) "Controller" means the Fuel Controller, appointed under this Act, and includes any commission or other body to which the duties and powers of Fuel Controller may be assigned;
- (b) "Minister" means Minister of Mines;
- (c) "regulations" means regulations made by the Lieutenant-Governor in Council or by the Fuel Controller, with the approval of the Lieutenant-Governor in Council, under this Act, and includes an order of the Controller. R.S.O. 1937, c. 53, s. 1.

2. The Lieutenant-Governor in Council may appoint an officer, or may issue a commission to two or more persons for the purpose of exercising the powers and carrying out the objects hereinafter set forth, and in the case of the appointment of such officer, he may be designated as the Fuel Controller for Ontario, and in the case of the appointment of a commission, the commission may be designated as The Fuel Control Commission of Ontario. R.S.O. 1937, c. 53, s. 2.

3. The Lieutenant-Governor in Council may appoint or employ such expert and other assistance for the Controller as may be deemed necessary or expedient. R.S.O. 1937, c. 53, s. 3.

4. The salaries and expenses of the Controller and of his officers, clerks and servants, and the expenses payable for providing such assistance, and generally all costs, charges and expenses incurred and payable in respect of the carrying out of the provisions of this Act, shall be chargeable to and shall be paid out of such sums as may be provided by the Legislature for investigating the fuel question, and the purchase, manufacture and handling of wood fuel, and for the manufacture and handling of peat fuel. R.S.O. 1937, c. 53, s. 4.

Powers and
duties of
Controller.

5. The Controller, subject to the approval of the Lieutenant-Governor in Council, may,

- (a) investigate and report to the Minister upon any source of fuel supply and the practicability of securing wood, peat or other fuel for use by the inhabitants of Ontario, or any locality therein, and the most economical and expeditious mode of utilizing such fuel supply, and of getting out, preparing, transporting and distributing the same;
- (b) make orders from time to time regulating the quantity of fuel which may be used, held or stored by any person, and directing that any amount in excess of such quantity shall be taken over from such person upon such terms as the Minister may approve, and sold, distributed and otherwise disposed of;
- (c) provide penalties for the contravention of any order so made;
- (d) make orders fixing the price at which wood, peat or other fuel may be sold or disposed of, having regard to the cost of getting out, distributing and marketing the same;
- (e) conduct with, or direct for the Minister, experimental work upon any material which may be deemed to be capable of furnishing suitable fuel;
- (f) make regulations respecting the use of fuel, and restricting the same as to seasons and hours of use, and the mode in which the same may be used;
- (g) take such measures as the Minister may direct for the enforcement of any regulations made by the Fuel Controller of Canada, as to the use, transportation, distribution and sale of fuel, and to co-operate with and assist the Fuel Controller of Canada in that respect. R.S.O. 1937, c. 53, s. 5.

Powers of
Minister.

6. The Minister, with the approval of the Lieutenant-Governor in Council, may,

- (a) purchase, lease or acquire, without the consent of the owner thereof, and enter upon, take and use such real and personal property as he may deem necessary for the purpose of acquiring peat lands or wood lands

for experimental purposes, or for the purpose of developing or cutting and getting out the wood, peat or other fuel;

- (b) purchase, erect, set up and operate all such buildings, machinery, plant, appliances and every other matter or thing which he may deem necessary for the purpose of preparing wood or peat or any other substance for fuel purposes;
 - (c) enter into contracts or agreements with the owner of any lands for the purpose of procuring a supply of wood or peat therefrom;
 - (d) enter into contracts and arrangements providing for the transportation, distribution, marketing and sale of the product of any works acquired by him, or of wood or peat fuel purchased or supplied under contract;
 - (e) arrange with the Government of Canada or the Fuel Controller of Canada for co-operation in or with any such operations or works and for sharing the cost of the same on such conditions and terms as may be agreed upon;
 - (f) take over, with or without the consent of the owner thereof, any existing works for the production of wood or peat and operate the same, and transport, distribute, market and sell the product thereof.
- R.S.O. 1937, c. 53, s. 6.

7. Whenever the Minister exercises any of the compulsory powers conferred by section 6, compensation shall be paid to the owner or any other person interested, and such compulsory powers may be exercised, and compensation shall be paid and determined in the manner provided by *The Public Works Act*, the provisions of which shall *mutatis mutandis* apply. R.S.O. 1937, c. 53, s. 7.

Compulsory powers to be exercisable under Public Works Act. Rev. Stat., c. 323.

8. The Lieutenant-Governor in Council may make Regulations, regulations,

- (a) prescribing the duties of the Controller and conferring upon him such powers as may be deemed proper for carrying out the objects of this Act;
- (b) imposing penalties for the violation of any regulation or order made by the Controller or by the Lieutenant-Governor in Council;
- (c) fixing the salaries, scale of remuneration and expenses to be paid to officers and other persons employed under this Act;

- (d) granting to the Minister such powers, in addition to those expressly conferred by this Act, as may be deemed necessary in order to provide a sufficient supply of fuel to the inhabitants of Ontario or of any locality therein;
- (e) offering rewards for the discovery of new sources of fuel supply or of new methods in the treatment of any substance which may be used as fuel. R.S.O. 1937, c. 53, s. 8.

**Interpre-
tation.**

9.—(1) In this section, “gas fuel” means natural gas and includes artificial gas, propane or butane used to supplement natural gas.

**Powers of
Controller.**

- (2) Notwithstanding any other Act, the Controller may,
 - (a) regulate and control the quantity of gas fuel that may be held or distributed by any person;
 - (b) prohibit or regulate and control the use of gas fuel by any person;
 - (c) fix the price at which gas fuel may be sold or disposed of, except where the natural gas referee has such jurisdiction under *The Natural Gas Conservation Act*;
 - (d) require the construction, installation, erection or acquisition of any works, pipe lines, plant, machinery, equipment or appliances necessary for the production, transmission and distribution of gas fuel, and apportion and allocate the cost thereof;
 - (e) regulate and control the installation and removal of appliances using gas fuel and provide for the issue of permits authorizing the installation thereof;
 - (f) impose penalties on persons who fail to comply with any order, requirement or direction made or issued under this section.

**Rev. Stat.,
c. 251.**

**Orders to
be deemed
administra-
tive.**

(3) Every order, requirement or direction made or issued under this section shall be deemed to be administrative and not of a legislative nature. 1948, c. 34, s. 1, *part*.

**Non-applica-
tion of Act.**

10. This Act shall not apply to electricity or to petroleum or petroleum products except as provided in section 9. 1948, c. 34, s. 1, *part*.

CHAPTER 153

The Game and Fisheries Act

1. In this Act,

Interpre-
tation.

- (a) "angling" means angling as defined in the Special Fishery Regulations;
- (b) "closed season" means a specified period in which game and fish may not be taken;
- (c) "Department" means Department of Lands and Forests;
- (d) "Deputy Minister" means Deputy Minister of Lands and Forests;
- (e) "dog" means any dog, male or female;
- (f) "domestic animals and birds" includes non-native species kept in captivity but does not include native species kept in captivity or non-native species present in the wild state;
- (g) "farmer" means any person actually living upon and tilling his own land, or land to the possession of which he is for the time being entitled, or any *bona fide* settler engaged in clearing land for the purpose of bringing it to a state of cultivation;
- (h) "ferret" means any of the domesticated forms of the old world polecat (*putorius putorius*) used for hunting;
- (i) "fishery" means the stretch of water, locality, premises, place or station described in the regulations, or in a licence, in or from which fish may be taken, and all nets, plants and appliances used in connection with any of them;
- (j) "fur-bearing animal" means a beaver, fisher, fox, lynx, marten, mink, muskrat, otter, raccoon, skunk, red squirrel, weasel or wolverine or any other animal which the Lieutenant-Governor in Council may declare to be a fur-bearing animal;

R.S.C. 1927,
c. 130.

- (*k*) "game" means all fur-bearing animals and all animals and birds protected by this Act and the *Migratory Birds Convention Act* (Canada) and includes any portion of any such animal or bird;
- (*l*) "guide" means any person who for hire or reward, or hope thereof, renders service as a guide to any other person engaged in angling or hunting;
- (*m*) "holder of a licence" means the person named in the licence;
- (*n*) "hunting" includes chasing, pursuing, worrying, following after, or on the trail of, or searching for, shooting, shooting at, stalking or lying in wait for any game, whether or not the game be then or subsequently captured, injured or killed, and "hunt" and "hunter" have corresponding meanings;
- (*o*) "licence" means an instrument issued under this Act conferring upon the holder the privilege to do the things set forth in it, subject to the conditions, limitations and restrictions contained in it and in this Act, but no licence shall be or operate as a lease;
- (*p*) "Minister" means Minister of Lands and Forests;
- (*q*) "non-resident" means any person who has not actually resided in Ontario for a period of twelve consecutive months immediately preceding the time that his residence becomes material under this Act;
- (*r*) "officer" means any member of the Ontario Provincial Police Force, any game and fishery warden and any other person authorized to enforce this Act;
- (*s*) "open season" means a specified period during which game and fish may be taken;
- (*t*) "pelt" means the untanned skin of a fur-bearing animal;
- (*u*) "person" includes an Indian;
- (*v*) "regulations" means regulations made under this Act;
- (*w*) "resident" means any person who has actually

resided in Ontario for a period of twelve consecutive months immediately preceding the time that his residence becomes material under this Act;

- (x) "skin" means the untanned skin of an animal stripped from the body;
- (y) "snare" means any device for the taking of animals whereby they are caught in a noose, and "snaring" has a corresponding meaning;
- (z) "Special Fishery Regulations" means the special fishery regulations for Ontario made under the authority of the Parliament of Canada;
- (za) "trap" means any spring trap, gin, deadfall, snare, box or net used to capture game, and "trapping" has a corresponding meaning;
- (zb) "unprime" where applied to pelts means that the pelts show natural markings of a dark or bluish colour on the flesh side. 1946, c. 33, s. 1; 1947, c. 40, s. 1; 1948, c. 35, s. 1; 1949, c. 37, s. 1; 1950, c. 22, s. 1.

APPLICATION

2. This Act shall not apply to domestic animals and domestic birds. 1946, c. 33, s. 2. Application of Act.

ADMINISTRATION

3. Notwithstanding any other Act, the administration of this Act and all matters respecting game and fish shall be under the control and direction of the Minister. 1946, c. 33, s. 3; 1947, c. 40, s. 2. Administration of Act.

4. The Minister may appoint deputy game and fishery wardens in and for any part of Ontario to serve without remuneration, but all the appointments shall terminate on the 31st day of December in each year. 1946, c. 33, s. 5 (1). Deputy wardens.

5. The expenses incurred in the administration and enforcement of this Act shall be paid out of such moneys as may be appropriated therefor by the Legislature. 1947, c. 40, s. 4. Expenses.

Search of
vehicles,
premises.

6.—(1) An officer shall have the authority of a constable for the purpose of this Act, and may without a search warrant,

(a) stop and search any vehicle, motor vehicle, aircraft, boat or launch or any railway car, including a caboose, baggage car or express car; and

(b) enter and search any hunting, mining, lumber or construction camp or any baggage office or express office, or any licensed premises where pelts are bought or sold,

if he has reasonable grounds to believe that any of them contains any game or fish taken in violation of this Act. 1946, c. 33, s. 7 (1); 1948, c. 35, s. 2.

Search of
receptacles.

(2) An officer may open and inspect any trunk, box, bag, parcel or receptacle which he has reason to suspect and does suspect contains game or fish killed, taken, shipped or had in possession in violation of this Act and for that purpose may enter all property which by this Act he is authorized to enter and may use necessary force where the owner or person in apparent charge obstructs or refuses to facilitate his inspection, and if he has reason to believe and does believe that it is necessary to enter any store, private house, warehouse or building which by this Act he is not authorized to enter without a search warrant, he shall make a deposition before a justice of the peace and demand a warrant to search that store, private house, warehouse or building, and thereupon the justice may issue a search warrant.

Arrest on
view.

(3) An officer on view may arrest without process any person found committing a violation of this Act or of the regulations and shall bring him with reasonable diligence before a competent court to be dealt with according to law.

Entry upon
private
property.

(4) An officer in the discharge of his duties and any person by him accompanied or authorized for the purpose, may enter upon and pass through or over private property without being liable for trespass.

Inspection of
camps.

(5) An officer may inspect all camps occupied by anglers and hunters and may prescribe methods for sanitation and disposal of refuse and the extinguishing of fires.

Duty to
prosecute.

(6) An officer shall investigate all violations of this Act and of the regulations brought to his notice and prosecute every person whom he has reasonable cause to believe is guilty of an offence against this Act.

(7) No person shall obstruct, hinder or delay or interfere with an officer in the discharge of his duty by violence or threats or by giving false information, or in any other manner. Obstructing officers.

(8) No officer or other person authorized to enforce this Act shall maliciously abuse his authority or neglect or refuse to perform any duty pertaining to his office. Neglect of duties.

(9) An officer may carry such arms and accoutrements as are necessary for self-defence if he possesses the authorities which may be legally necessary for that purpose. 1946, c. 33, s. 7 (2-9). Arms for self-defence.

(10) Any search warrant or authorization to search issued or authorized under this Act may be executed at any time, including Sunday or other holiday, and by day or night. 1949, c. 37, s. 2. Search warrant.

LICENCES

7.—(1) No person shall hunt, take, molest, wound, trap, kill or destroy or attempt to hunt, take, molest, wound, trap, kill or destroy any fur-bearing animal or any bear, deer or moose, except under the authority of a licence. Licences.

(2) Subsection 1 shall not apply to a farmer or his sons residing upon his lands and hunting and trapping fur-bearing animals, other than beaver, thereon during the open seasons. Exception.

(3) The holder of a licence may sell pursuant to this Act the fur-bearing animals or their pelts, hunted, taken, trapped, or killed by him under the authority of the licence. 1946, c. 33, s. 8. Authority to sell under licence.

8.—(1) A licence to trap fur-bearing animals on Crown lands shall be subject to such limitations as to territory and the number of fur-bearing animals which may be taken as the Minister may deem proper. Restrictions in trapping licences for Crown land.

(2) The Minister may limit the number of licences to be issued for any area of Crown land. 1947, c. 40, s. 5, *part.* Limitation of number of licences.

9.—(1) No person shall hunt, take, molest, wound, trap, kill, destroy or possess, or attempt to hunt, take, molest, wound, trap, kill or destroy any bird, fur-bearing animal or game within the limits of a provincial park, except as provided in the regulations. 1947, c. 40, s. 5, *part.* Hunting in provincial parks.

Weapons,
etc., in
provincial
parks.

(2) No person shall possess or use within the limits of a provincial park any trap, fire-arm, explosive or weapon except as provided in the regulations. 1947, c. 40, s. 5, *part*; 1950, c. 22, s. 3.

Non-
residents.

10. No non-resident shall hunt, take, molest, wound, trap, kill or destroy or attempt to hunt, take, molest, wound, trap, kill or destroy any animal or bird or carry or use any fire-arm or air-gun in any place frequented by game, except under the authority of a licence. 1946, c. 33, s. 9; 1948, c. 35, s. 3; 1950, c. 22, s. 4.

Fire-arms.

11.—(1) No person shall carry or use any fire-arm or air-gun for the purpose of hunting any animal or bird, except under the authority of a licence. 1946, c. 33, s. 10 (1); 1949, c. 37, s. 3 (1).

Fire-arms
and
air-guns.

R.S.C. 1927,
c. 130.

(2) No person shall carry or use any fire-arm or air-gun from and including the 1st day of March to and including the 31st day of August in any year for the purpose of hunting any animal or bird not protected by the *Migratory Birds Convention Act* (Canada), this Act or the regulations, except under the authority of a licence. 1947, c. 40, s. 6 (1).

Exceptions
as to
farmers.

(3) Subsections 1 and 2 shall not apply to a farmer or his sons residing and hunting on his lands. 1946, c. 33, s. 10 (2); 1947, c. 40, s. 6 (2).

Power of
fire-arms.

(4) The holder of a licence under subsection 1 shall not,

(a) carry or use a rifle of greater calibre or projectile power than the rifle commonly known as a "twenty-two calibre low-powered rifle"; or

(b) while hunting with a shotgun have in his gun or on his person shotgun shells loaded with ball or with shot larger than number two shot,

during the open season for deer or moose in areas which such animals inhabit or in which they are usually found. 1949, c. 37, s. 3 (2).

Minors.

(5) No licence shall be issued to any person under the age of sixteen years, except as prescribed by the regulations. 1946, c. 33, s. 10 (4); 1950, c. 22, s. 5.

Licences,

cold
storage;

game
dealer's;

12.—(1) No person shall,

(a) engage in the business of cold storage of game;

(b) buy, sell or expose for sale, game, other than fur-bearing animals, that may otherwise lawfully be sold;

(c) engage in, carry on, or be concerned in tanning, ^{fur} dressing, plucking, dyeing or treating, or undertake to ^{dresser's:} tan, dress, pluck, dye or treat any fur-bearing animal or bear or any pelt or skin of any of them;

(d) possess, or engage in, or carry on, or be concerned in ^{fur} trading, buying or selling, or soliciting trade in ^{dealer's.} fur-bearing animals or their pelts,

except under the authority of a licence.

(2) No holder of a licence issued under clause *d* of subsection 1 shall sell, trade or barter, or be concerned in the selling, ^{Trades only} trading or bartering of any pelts to or with any other person ^{between} in Ontario except where that other person holds a licence ^{licensed} under clause *d* of subsection 1. 1946, c. 33, s. 11 (1, 3). ^{fur} ^{dealers.}

13. No hotel, boarding-house, camp, restaurant or club ^{Hotels,} shall possess any game, except under the authority of a ^{restaurants} licence. 1946, c. 33, s. 12. ^{or clubs.}

14. No person or his servant, clerk or agent shall buy, sell, ^{Dealing in} expose or keep for sale, directly or indirectly on any pretence ^{moose,} or device, for any valuable consideration, barter, give to or ^{deer,} obtain from any other person any moose, deer, caribou or ^{caribou} wapiti, wherever killed or procured, except under the authority ^{and} of a licence. 1946, c. 33, s. 13. ^{wapiti.}

15. Notwithstanding anything in this Act, any person ^{Dealing in} may under the authority of a licence sell the meat of any ^{muskrat,} muskrat, beaver, raccoon or bear if taken lawfully, and any ^{etc.} person may without a licence possess or buy any such meat for his own use. 1949, c. 37, s. 5.

16. No person shall use or be accompanied by a dog while ^{Dog} hunting deer or moose, except under the authority of a licence. ^{licence for} 1946, c. 33, s. 15 (1); 1947, c. 40, s. 7 (1). ^{hunting} ^{game.}

17.—(1) No person shall breed or propagate game or ^{Licence for} possess game for that purpose, except under the authority of ^{propagation} a licence. ^{of game;}

(2) The licence shall be for the period of time and on the ^{duration} terms and conditions prescribed by the Lieutenant-Governor ^{and terms.} in Council. 1946, c. 33, s. 16 (1, 2).

Game for
exceptional
purposes.

(3) The Deputy Minister may issue a licence to any person to possess live game for scientific or educational purposes, or as a pet. 1946, c. 33, s. 16 (3); 1949, c. 37, s. 6.

Idem.

(4) No person shall take game during the closed season for educational or scientific purposes, except under the authority of a licence issued by the Deputy Minister. 1946, c. 33, s. 16 (4).

Killing or
capturing
for
scientific
purposes.

R.S.C. 1927,
c. 130.

(5) Notwithstanding anything in this Act any person licensed under this Act or the *Migratory Birds Convention Act* (Canada) to kill or capture protected animals or birds may use traps or fire-arms for that purpose at any time or place where the licence is valid. 1948, c. 35, s. 4.

Fish nets.

18.—(1) No person shall buy, sell or possess gill, hoop, pound, seine or trap nets, except under the authority of a licence. 1946, c. 33, s. 17 (1); 1950, c. 22, s. 6 (1).

Restricted
sale.

(2) No person shall sell a gill, hoop, pound, seine or trap net to any other person not the holder of a commercial fishing licence, or a licence under subsection 1. 1946, c. 33, s. 17 (2); 1948, c. 35, s. 5; 1950, c. 22, s. 6 (2).

Fish for
exceptional
purposes.

19. No person shall take any fish or spawn from Ontario waters for the purpose of stocking, artificial breeding or for scientific or educational purposes, except under the authority of a licence. 1946, c. 33, s. 18.

Turtles.

20. No person shall use a trap to take turtles, except under the authority of a licence. 1947, c. 40, s. 8.

Tourist
outfitter's
camps.

21.—(1) No person shall erect or establish or attempt to erect or establish, or own or operate, a tourist outfitter's camp in the district of Patricia, Kenora, Rainy River, Thunder Bay, Cochrane, Algoma, Sudbury, Manitoulin or Timiskaming or the parts of the districts of Parry Sound, Nipissing and Haliburton and the county of Renfrew lying north of the line of the Canadian National Railway from Parry Sound to Pembroke by way of Scotia, Madawaska and Golden Lake, except under the authority of a licence.

Interpre-
tation.

(2) For the purposes of this section,

(a) "tourist outfitter" means a person who owns or operates a camp and maintains or provides directly or indirectly for the accommodation and use of tourists

any boat, canoe, tent, sleeping bag, blanket, utensil or other article used or required for angling, hunting, or camping, or supplies or provides licensed guides;

- (b) "camp" means a dwelling, lodge, cabin, tent, house-boat or other temporary or permanent structure used as sleeping-quarters;
- (c) "tourist" means a guest, tenant, club member or any other person who pays directly or indirectly for accommodation or services rendered at a camp. 1946, c. 33, s. 19 (1, 3).

22.—(1) No person shall act as a guide, except under the Guides. authority of a licence. 1946, c. 33, s. 20 (1).

(2) No person shall employ any other person as a guide Employment of guides. unless such other person is the holder of a guide's licence. 1950, c. 22, s. 7.

(3) No non-resident shall hunt, take or kill deer in the Guides for non-resident hunters. district of Rainy River or Kenora or moose in any part of Ontario without employing and being accompanied by a licensed guide, but where two or more non-residents hunt together the number of guides employed shall be not less than one guide for each two non-residents. 1946, c. 33, s. 20 (3).

23.—(1) No licence shall be transferred and no person Transfer of licence, coupon or seal. shall buy, sell, exchange or in any way become a party to the transfer of any licence, shipping coupon or seal, or in any way use or attempt to use a licence, shipping coupon or seal issued to any other person, except upon such terms and conditions as the Lieutenant-Governor in Council may prescribe. 1948, c. 35, s. 6.

(2) Any licence may be cancelled by the Deputy Minister, Cancellation of licence. subject to appeal to the Minister, for a violation by the holder, or by any other person with his connivance, of this Act or the regulations or of the licence, whether or not a prosecution has been instituted in respect to the violation.

(3) The issue of a licence shall be in the discretion of the Issue of licence discretionary. Deputy Minister, subject to appeal to the Minister.

(4) The holder of a licence shall produce and show it to any Production of licence on demand. officer as often as reasonably requested by him.

Trapping
licences.

(5) No person who is not a resident British subject shall be the holder of a licence to trap fur-bearing animals.

Licence to
be carried.

(6) No holder of a licence shall hunt, kill or take any game unless at that time he has the licence on his person and he shall wear in a conspicuous place on his person any badge which may be furnished him by the Department at the time of issue of the licence, and the licence with which a badge is furnished at the time of issue shall not be valid unless the holder is wearing the badge in the way required by this subsection.

Multiplicity
of licences.

(7) No person shall be the holder of more than one licence to hunt deer or moose in any year.

Licence
obtained by
misrepresentation.

(8) The holder of a licence obtained by false representations or by false and misleading statements made to the issuer in respect to the age, nationality, place of residence or other information necessary to be furnished at the time of the issuing of the licence shall be deemed to be the holder of a void licence and the holder may be prosecuted under this Act in the same manner and with the same effect as he could be prosecuted if he were not the holder of a licence. 1946, c. 33, s. 21 (2-8).

Issuers of
licences.

24.—(1) No person shall issue any licences or collect any fees in respect thereof unless authorized by this Act.

Licences
not to be
issued in
blank.

(2) No issuer of licences shall issue and no person, while hunting or in a hunting camp or on his way to or from a hunting camp, shall possess a hunting licence that does not exhibit in the proper place the name of the possessor.

Licences
not to be
antedated.

(3) No issuer of licences shall issue and no person shall accept or receive any antedated licence. 1946, c. 33, s. 22.

Township
licence to
hunt
pheasants,
rabbits
and foxes.

25. Where a township licensing system is in operation under clause *g* of section 77 no person shall hunt pheasants, rabbits or foxes in the township or on the lands controlled by the township organization, as the case may be, during the open season without a licence from the township or township organization. 1950, c. 22, s. 8.

LICENCE FEES

Licences,

residents;

26. A licence may be issued,

(a) to a resident and the licences and fees shall be,

(i) to hunt deer, where subclause ii does not
apply.....\$ 3.50
and an issuing fee of..... .50

- (ii) for a farmer actually living upon and tilling his own land in the district of Haliburton, Muskoka, Parry Sound, Nipissing or Manitoulin or that part of Ontario lying north and west of those districts, to kill in the county or territorial district in which he resides one deer during the open season for his own use and not to be sold or bartered and restricted to one licence for each household.....\$.80
and an issuing fee of..... .20
- (iii) to hunt moose..... 5.50
and an issuing fee of..... .50
- (iv) for a British subject to hunt and trap fur-bearing animals..... 4.50
and an issuing fee of..... .50
- (v) for a person to carry or use fire-arms or air-guns for hunting purposes pursuant to subsection 1 of section 11..... .85
and an issuing fee of..... .15
- (vi) for a person to carry or use fire-arms or air-guns for hunting purposes pursuant to subsection 2 of section 11..... .85
and an issuing fee of..... .15

1946, c. 33, s. 23, cl. (a); 1948, c. 35, s. 7.

- (b) to an organized hunting camp of not fewer than four residents, and the licence and fees shall be, hunting
camps,
residents:

- (i) for each four holders of resident deer-licences.....\$ 3.50
and an issuing fee of..... .50

1946, c. 33, s. 23, cl. (b).

- (c) to a non-resident, and the licences and fees shall be, hunting
camps,
non-
residents:

- (i) to hunt bear, fox, game birds, rabbits, raccoon, squirrel and wolf.....\$15.00
and an issuing fee of..... .50

- (ii) to hunt deer, bear, fox, game birds, rabbits, raccoon, squirrel and wolf..... 25.00
and an issuing fee of..... .75

(iii) to hunt moose, deer, bear, fox, game birds,
rabbits, raccoon, squirrel and wolf.....\$74.00
and an issuing fee of..... 1.00

(iv) to hunt bear from the 1st day of April
to the 15th day of June provided that
the holder of this licence shall not use a
shot gun or a rifle commonly known as a
twenty-two calibre low-powered rifle or
a rim-fire rifle..... 5.00
and an issuing fee of..... .25

(v) to hunt wolves from the 1st day of March
to the 15th day of June..... 5.00
and an issuing fee of..... .25

1946, c. 33, s. 23, cl. (c); 1949, c. 37, s. 8;
1950, c. 22, s. 9 (1).

dogs; (d) for a dog used by or accompanying any person while
hunting deer or moose, and the licence and fee shall be,
(i) licence\$ 1.85
and an issuing fee of..... .15

1946, c. 33, s. 23, cl. (d).

raccoon; (e) to a resident to hunt raccoon, and the licence
fee shall be.....\$ 2.00

raccoon
dogs. (f) for a dog used by or accompanying any person
while hunting raccoon, and the licence fee
shall be.....\$ 1.00

1950, c. 22, s. 9 (2).

Licences,

27. A licence may be issued,

cold
storage,
of game;

(a) to any person engaged in the business of cold
storage of game, and the fee shall be.....\$ 3.00

1946, c. 33, 24, *part*; 1950, c. 22, s. 10 (1).

game
dealers;

(b) to any person to buy, sell or deal in any game, other
than fur-bearing animals, that may be lawfully
bought, sold or dealt in, and the fee shall be,

(i) in cities.....\$10.00

(ii) in towns..... 5.00

(iii) in other places..... 2.00

(c) to any hotel, boarding-house, camp, restaurant or ^{hotels,}
club to buy, sell or possess any game, other than ^{restaurants}
fur-bearing animals, that may be lawfully sold, and ^{or clubs;}
the fee shall be,

(i) in cities.....\$10.00

(ii) in towns..... 5.00

(iii) in other places..... 2.00

(d) to any person to buy, sell and deal in fur-bearing ^{fur dealers;}
animals or their pelts, and the fee shall be,

(i) for a resident British subject on specific
premises, to be known as "store licence". \$25.00

(ii) for a resident British subject where
premises are not designated, to be known
as "travelling fur buyer".....100.00

(iii) for a resident who is not a British subject. 200.00

(iv) for a non-resident.....200.00

(v) for a resident British subject on specific
premises, to be known as "wholesale
licence".....100.00

(vi) for non-resident wholesale buyers, pur-
chasing direct from holders of a wholesale
licence..... 5.00

(vii) for a resident British subject purchasing
for personal use, restricted as to time and
quantity, to be known as "restricted
licence"..... 1.00

(e) to any person engaged in the business of dress- ^{tanners;}
ing, plucking, dyeing, tanning or treating pelts,
and the fee shall be.....\$10.00

1946, c. 33, s. 24, cls. (b-e).

(f) to owners or operators of tourist outfitters' camps, ^{tourist}
and the fee shall be, ^{outfitters'}
^{camps.}

(i) for residents.....\$10.00

(ii) for non-residents..... 25.00

1950, c. 22, s. 10 (2).

ROYALTIES

Royalties payable.

28.—(1) No person shall take or ship or attempt to take or ship to any point outside of Ontario any fur-bearing animal or its pelt or send or have sent any of them to a tanner or taxidermist to be tanned or plucked or treated in any way without a licence and without paying a royalty. 1946, c. 33, s. 25 (1); 1948, c. 35, s. 8 (1).

Exceptions.

(2) The royalties shall apply to pelts that are damaged or destroyed by any means, but they shall not apply, where the holder furnishes the Department with satisfactory proof of their origin,

(a) to silver, black, cross and blue fox and mink, bred on fur-farms operating within Ontario under a licence; or

(b) to pelts imported from any place outside of Ontario. 1946, c. 33, s. 25 (2); 1948, c. 35, s. 8 (2).

Amount of royalty.

(3) The Lieutenant-Governor in Council may prescribe the royalty payable under this section, and may exempt rabbit and squirrel from subsections 1 and 2.

Bear exempt.

(4) Notwithstanding anything in this section any person holding the proper hunting licence may without any other licence and without paying royalty take or export to a point outside Ontario any bear taken or killed by him, or its skin, or may have the skin tanned, plucked or treated in any way within Ontario. 1946, c. 33, s. 25 (3, 4).

SEASONS FOR ANIMALS

Open seasons.

29. No person shall hunt, kill or destroy, or attempt to hunt, kill or destroy any caribou, deer, moose or wapiti, except during such times and under such terms and conditions and in such parts of Ontario as the Lieutenant-Governor in Council may prescribe. 1949, c. 37, s. 9.

Beaver.

30.—(1) No person shall at any time trap, hunt, take, or kill, or attempt to trap, hunt, take or kill, any beaver, or possess the carcass, pelt or any part of any beaver, except during such period and on such terms and conditions as the Lieutenant-Governor in Council may prescribe, but the Minister may at any time by order in writing authorize the taking or killing of beaver by an overseer or other officer named in the order in any designated locality in which, in the opinion of the Minister, beaver are causing damage to a

highway or to property of His Majesty or private property, and the beaver taken or killed shall be accounted for and delivered to the Department. 1946, c. 33, s. 27 (1); 1948, c. 35, s. 9 (1); 1949, c. 37, s. 10 (1).

(2) The skins and pelts of beaver, fisher and marten shall be sealed or marked by an officer before sale, and no fur dealer or buyer shall have unsealed or unmarked beaver, fisher or marten skins or pelts in his possession. 1950, c. 22, s. 11 (1). Sealing and marking of skins and pelts.

(3) No person shall trap, hunt, take or kill, or possess the pelt or any part of any fisher, fox, lynx, marten, mink, muskrat, otter, rabbit, raccoon or any black, gray or fox squirrel except in such localities and during such periods and subject to such terms and conditions as the Minister may prescribe. 1950, c. 22, s. 11 (2). Hunting, trapping, etc.

(4) No person shall,

(a) at any time shoot or spear any muskrat, beaver or otter; Muskrat, beaver and otter.

(b) at any time hunt, take, kill or molest any female moose of any age or any male moose under the age of one year; Female moose and moose calves.

(c) at any time hunt, take, kill or molest any female deer of any age or any male deer under the age of one year except under subsections 3 and 4 of section 31; Female deer and deer under one year.

(d) hunt, take, kill or molest any deer or moose while it is swimming in any waters. 1946, c. 33, s. 27 (3); 1948, c. 35, s. 9 (3). Swimming deer.

BAG LIMITS FOR ANIMALS

31.—(1) No resident shall during any one year or season take or kill more than one male deer over one year of age under a resident deer-licence and one bull moose over one year of age under a moose licence but this subsection shall not apply to deer which are the private property of any resident, and which are killed or taken by him or by his direction or with his consent in or upon his own land in accordance with section 41. Number of deer which residents may take.

(2) No non-resident shall during any one year or season take or kill more than one male deer over one year of age and one bull moose over one year of age under a non-resident hunting licence. Number of deer which non-residents may take.

Aggregate
kill of
deer.

(3) Notwithstanding subsections 1 and 2 a party of two or more persons hunting together and holding licences may kill one female deer of any age or one male deer under the age of one year for every two persons of the party, but those persons shall not take or kill in the aggregate more than one deer for each person of the party.

Deer taken
under camp
licence.

(4) Notwithstanding subsections 1 and 3 a hunting party of four or more residents having a camp licence or camp licences may, in addition to the aggregate kill in subsection 3, kill one deer for each camp licence held by the party. 1946, c. 33, s. 28 (1-4).

Exception.

(5) The Lieutenant-Governor in Council may make regulations designating the counties and townships in which subsections 1, 2, 3 and 4 shall not apply to deer. 1950, c. 22, s. 12 (1).

Cotton-tail
rabbits.

(6) No person shall take, kill or destroy more than six cotton-tail rabbits in any one day. 1946, c. 33, s. 28 (6); 1950, c. 22, s. 12 (2).

PROTECTION OF ANIMALS

Protection
of muskrat
and beaver
houses;

32.—(1) No person shall cut, spear, break or destroy a muskrat house or beaver house or beaver dam, or set or place a trap closer than five feet to a beaver house or muskrat house, burrow, feed-house or push-up. 1946, c. 33, s. 29, cl. (a).

Dens of
fur-bearing
animals.

(2) No person shall molest, injure or destroy a den or usual place of habitation of any fur-bearing animal other than a skunk or fox. 1946, c. 33, s. 29, cl. (b); 1947, c. 40, s. 11 (1).

Game not
to be taken
by traps
or snares.

(3) No person shall trap or take any deer or moose by means of traps, nets, snares, baited lines or other similar contrivances or set any of them for any such animal and if set any person may destroy them without incurring any liability. 1946, c. 33, s. 29, cl. (c).

Device for
casting rays.

(4) No person, during the closed season for deer or moose, shall have in his possession between one-half hour after sunset and one-half hour before sunrise any device capable of throwing or casting rays of light upon an object, and any rifle or other fire-arm capable of killing deer or moose, unless the rifle or other fire-arm is unloaded and encased, or is dismantled. 1950, c. 22, s. 13 (1).

(5) No person shall use snares for any purpose in the county of Bruce, Carleton, Dundas, Durham, Frontenac, Glengarry, Grenville, Grey, Halton, Hastings, Lanark, Leeds, Lennox and Addington, Northumberland, Ontario, Oxford, Peel, Peterborough, Prescott, Prince Edward, Russell, Stormont, Victoria, Waterloo or York, provided that snares may be used for the taking of wolves in the townships of Canoto and Palmerston in the county of Frontenac from the 1st day of December to the 30th day of April. 1946, c. 33, s. 29, cl. (e); 1947, c. 40, s. 11 (2); 1949, c. 37, s. 11 (1); 1950, c. 22, s. 13 (2). Snares prohibited in certain counties.

(6) No person shall use snares for any purpose in any part of Ontario, except the district of Rainy River, Kenora or Thunder Bay, during the open season for deer and moose in that part and during the period of one month immediately preceding the open season. 1946, c. 33, s. 29, cl. (f); 1949, c. 37, s. 11 (2). Snares in open seasons.

(7) No person shall use snares for the taking of beaver. 1946, c. 33, s. 29, cl. (g). Snares for beaver.

(8) No person shall use ferrets in hunting rabbits or game. 1950, c. 22, s. 13 (3). Ferrets.

(9) Notwithstanding subsection 1, the Minister may issue a permit in writing to any person under which such person may place traps in muskrat houses, burrows, feed-houses or push-ups during the open season for muskrat. Traps in muskrat houses, etc.

(10) Notwithstanding subsection 1, the holder of a trap-line licence, while trapping in his trap-line area, may open a muskrat house, den or push-up for the purpose of setting traps therein during the open season for trapping muskrats, and he shall properly close the opened house, den or push-up. 1950, c. 22, s. 13 (4). Opening muskrat houses, etc., to set traps.

33.—(1) While hunting deer or moose no person shall use or be accompanied by a dog commonly known as a police dog or any cross-breed thereof. Police dogs.

(2) While hunting deer or moose no person alone shall use or be accompanied by a dog, but a party of two or more, four or more, six or more, or eight or more may use and be accompanied by not more than one, two, three or four dogs respectively. Number of dogs allowed in hunting big game.

(3) No person owning, harbouring or claiming to own a dog shall allow it to run at large during the closed season for deer Dogs at large.

in a locality which deer, moose, caribou or wapiti usually inhabit or in which they are usually found.

Power to
kill dogs
at large
on sight.

(4) A dog found running deer, moose, caribou or wapiti during the closed season for deer in that locality shall be deemed to be at large with the leave of the owner and may be killed on sight by an officer without being liable for damages to any other person or to a penalty.

Notice to
be given of
dogs lost in
hunting.

(5) A person who loses a dog while used in the hunting of deer or moose and is unable to find it at the end of the hunt shall immediately report the loss to the Department in writing giving a description of the dog and the locality in which it was lost. 1946, c. 33, s. 30.

Dogs not
to be used
for hunting
small game.

34.—(1) No owner of a dog shall use it or allow it to be used in any manner for the hunting, taking or killing of any mink, beaver, otter or muskrat. 1946, c. 33, s. 31 (1); 1948, c. 35, s. 10.

Grey-
hounds.

(2) No owner of a dog commonly known as a greyhound, or any cross-breed thereof, shall allow it to pursue game or run at large on Sunday in any area which game usually inhabits or in which game is usually found.

"owner".

(3) In this section, "owner" includes any person having a dog in his possession or charge or under his control. 1946, c. 33, s. 31 (2, 3).

Power to
take
fur-bearing
animals
for
preservation
of property.

35. Nothing in this Act shall apply to any person taking or destroying any fur-bearing animal, other than beaver, on his own lands, in defence or preservation of his property by any means at any time, but he shall within ten days report the pelts of the animals in respect of which there is a closed season to the Department and he shall not offer them for sale or barter during the closed season except under a licence and any fur dealer possessing the pelts shall hold the licence and forward it to the Department when applying for a licence to ship them out of Ontario or to dress or tan them. 1946, c. 33, s. 32.

Possession
of unprime
skins
prohibited.

36. No person shall without lawful excuse have in his possession or in the possession of his servant or agent or any other person on his behalf at any time any pelts while they are in an unprime condition, except the pelts of muskrat taken in accordance with section 35. 1946, c. 33, s.33.

SEASONS FOR BIRDS

37. No person shall hunt, kill or destroy any ruffed grouse, spruce partridge, Hungarian partridge, pheasant, sharp-tailed grouse, prairie-hen, ptarmigan, quail or wild turkey, except during such periods and on such terms and conditions as the Lieutenant-Governor in Council may prescribe. 1946, c. 33, s. 34.

38. No person shall shoot, destroy, wound, molest, take or possess, or attempt to shoot, destroy, wound, molest or take any bird protected by this Act during a closed season, or any other wild native bird at any time, including ospreys and eagles, but excluding hawks, owls, crows, cow-birds, blackbirds, starlings and house-sparrows. 1946, c. 33, s. 35.

PROTECTION OF BIRDS

39.—(1) No person shall use, set or maintain any net, trap, snare, springe, cage or other appliance for the purpose of capturing or killing any bird contrary to section 38, and any person may destroy those appliances, where so used, set or maintained, without incurring any liability therefor and without penalty.

(2) No owner of a dog shall allow it to molest or follow upon the track of any wild game-bird or disturb its nest during the months of April, May, June and July in any year, except in a field trial approved by the Department. 1946, c. 33, s. 36.

40. No person shall take or possess any live bird protected by this Act or take, destroy or possess its eggs or nests, except a holder of a licence to engage in the business of propagating the birds or to take or possess the eggs or nests for educational or scientific purposes. 1946, c. 33, s. 37.

PROTECTION OF GAME

41. Notwithstanding anything in this Act, a person who puts, breeds or imports game, other than fur-bearing animals, upon his own land for the purpose of breeding and preserving them may hunt, take or kill that game during the open seasons for the territory in which the game is kept. 1946, c. 33, s. 38.

Possession
of game
in closed
seasons.

42. No person shall during the closed season have in his possession or in that of his servant or agent, or in that of any other person on his behalf, any game wherever killed or procured, except that,

- (a) any deer, moose, or bird protected by this Act, lawfully killed or procured, may be kept during the period between the end of the open season in any year and the 31st day of March in the next following year, unless otherwise provided under the regulations, or may be kept under a licence during the period between the end of the open season and the 31st day of August in the next following year;
- (b) any pelts of animals taken in Ontario may be possessed during the closed season under a licence if applied for within ten days after the end of the open season in which they were taken;
- (c) any pelts of animals taken outside of Ontario may be possessed during the closed season under a licence if applied for within forty-eight hours after the pelts are received; and
- (d) any person who has lawfully taken and lawfully possesses any deer or moose may donate to any other person for his own use or for the use of his immediate family any portion of the deer or moose if there is attached to the donated portion a statement signed by the donor exhibiting his full name and address and the number of the licence under which the animal was taken. 1946, c. 33, s. 39; 1949, c. 37, s. 12.

Purchase
or sale
of game.

43. No person shall sell or purchase any bird mentioned in section 37, or any deer, moose, caribou or wapiti, or expose any of them on any commercial premises, and no restaurant, camp, boarding-house, hotel or club shall mention on a bill of fare or serve any of them, but any person may propagate, buy or sell any pheasant or quail under a licence issued on such terms and conditions as the Lieutenant-Governor in Council may prescribe. 1946, c. 33, s. 40.

Cotton-tail
rabbits.

44. No person shall sell, offer for sale, purchase or barter, or be concerned in the sale, purchase or barter of cotton-tail rabbits. 1946, c. 33, s. 41; 1950, c. 22, s. 14.

45. No person shall take or kill, or attempt to take or kill, any game by using poison, and possession of poison by any trapper shall be *prima facie* evidence that it was used by him in violation of this section; but the Department may issue to a limited number of trappers licences to use poison for the taking of wolves. 1946, c. 33, s. 42. Poison prohibited.

46. In any locality which game usually inhabits or in which game is usually found, no person shall, Prohibitions as to guns.

(a) have any air-gun, gun, rifle or fire-arm in his possession in a place from which game may be shot, unless it is unloaded and encased or it is dismantled, between one-half hour after sunset and one-half hour before sunrise of any day, except as may be provided by the regulations;

(b) discharge any air-gun, gun, rifle or other fire-arm between one-half hour after sunset on Saturday and one-half hour before sunrise on Monday next following; or

(c) discharge any air-gun, gun, rifle or fire-arm between one-half hour after sunset and one-half hour before sunrise from midnight Sunday until midnight Saturday in any week except under a licence for the purpose of hunting, shooting, taking, killing or possessing raccoon during the open season therefor when accompanied by a dog or dogs licensed therefor. 1948, c. 35, s. 11; 1949, c. 37, s. 13; 1950, c. 22, s. 15.

47. No person shall for hire, gain or reward, or hope thereof, hunt, take or kill any game, or employ, hire or for valuable consideration induce any other person to do any of those acts. 1946, c. 33, s. 44. Hunting for hire prohibited.

48.—(1) Nothing in this Act shall prevent the importation of game into Ontario from any place outside of Ontario if it is accompanied by an affidavit or statutory declaration, satisfactory to the Department, that the game was legally taken. 1946, c. 33, s. 45. Importation of game.

(2) No person shall release into natural cover any animal or bird imported into Ontario or propagated from stock imported into Ontario without the written authority of the Minister. 1948, c. 35, s. 12. Release of imported stock.

Export of
game by
non-
residents.

49.—(1) No non-resident entitled to hunt under a licence shall export in any one open season more game actually and lawfully killed by him than one deer, one bull moose, all bears or their skins and other species of game in the number authorized to be possessed by the regulations made under this Act or under the *Migratory Birds Convention Act* (Canada). 1946, c. 33, s. 46 (1); 1949, c. 37, s. 14; 1950, c. 22, s. 16.

R.S.C. 1927,
c. 130.

Coupons.

(2) The holder of the licence shall attach the shipping coupon to each of those animals or to the receptacle containing them, or any part of them, or containing birds. 1946, c. 33, s. 46 (2).

FISH AND FROGS

Waters
set apart.

50. The Lieutenant-Governor in Council may set apart any waters for the conservation or propagation of fish. 1948, c. 35, s. 13.

Fishing in
protected
waters
prohibited.

51.—(1) No person shall angle for or take fish by any means from waters set apart for the conservation or propagation of fish, provided that the Department may take fish from such waters for the stocking and rearing of fish for public waters or may permit fish to be taken from such waters for scientific purposes. 1946, c. 33, s. 49 (1); 1948, c. 35, s. 14.

Angling in
licenced
waters
restricted.

(2) No person shall, for purposes of sale or traffic, angle for or take fish in fishing grounds or waters licensed for the purpose of net fishing and occupied by the holder of a licence for that purpose, or angle for any purpose within twenty-five yards of a pound net. 1946, c. 33, s. 49 (2).

No traffic
in certain
fish.

52.—(1) No person shall sell, offer for sale, purchase or barter or be concerned in the sale, purchase or barter of any small-mouthed black bass, large-mouthed black bass, maskinonge, speckled trout, brown trout, rainbow trout, Kamloops trout or Aurora trout, but under a licence issued by the Minister any person may sell speckled trout, brown trout, rainbow trout, Kamloops trout or Aurora trout, if they are propagated by the holder of the licence. 1946, c. 33, s. 50 (1); 1949, c. 37, s. 15.

Idem.

(2) No person shall sell, offer for sale, purchase or barter, or be concerned in the sale, purchase or barter of yellow pickerel (also called pike-perch or dore), pike, lake trout or sturgeon taken from Ontario waters by angling or taken in any other manner by a person without a licence:

(3) No person shall buy, sell or possess any fish or portion of any fish taken from Ontario waters during a closed season for that fish under any Act of the Parliament of Canada. 1946, c. 33, s. 50 (2, 3). Idem.

53. No person shall use artificial lights for the taking of frogs except under the authority of a licence. 1946, c. 33, s. 51. Artificial lights.

54.—(1) Every person who sets a net for the taking of fish shall attach a buoy to each end of it while it is so set. Buoys on nets.

(2) Every person who sets a net, or uses a pole for setting baited hooks, shall attach to it the name of the owner legibly marked on two pieces of metal or wood and he shall so preserve those marks during the fishing season as to be visible without taking up the net or pole, and any net or pole without those marks, and the hooks attached to the pole, shall be liable to confiscation. 1946, c. 33, s. 52. Nets and poles to bear identification marks.

55. Where a fishery is in charge of any person other than the owner, either as occupant or servant, and any of the provisions of this Act are violated by that person or by the owner, they shall be jointly and severally liable for any penalties incurred and all damages recoverable in respect to the violation. 1946, c. 33, s. 53. Joint liability of owner and agent.

56.—(1) The grant by patent of the bed of any navigable water or of any lake or river shall not include the exclusive right of fishing in the water which covers or flows over the land granted unless that exclusive right is expressly granted by the patent. 1946, c. 33, s. 54 (1). Exclusive right to fish in navigable waters.

(2) No lease or conveyance made on or after the 26th day of June, 1939, granting exclusive rights to any person in or along any stream or lake which has been stocked with fish of any variety by the Department or by the late Department of Game and Fisheries at any time after the 1st day of May, 1934, shall be valid unless the lease or conveyance has been submitted to and approved by the Minister. 1946, c. 33, s. 54 (2); 1947, c. 40, s. 12. Lease of fishing rights.

GENERAL PROVISIONS

57. No person who has taken or killed any animal, bird or fish, suitable for food, shall allow the flesh to be destroyed or spoilt, and no person who has taken or killed a fur-bearing Flesh and pelt not to be wasted.

animal shall allow the pelt to be destroyed or spoilt. 1946, c. 33, s. 55.

58.—(1) No person, while engaged in hunting or trapping game, or while going to or returning from a hunting camp or locality which game inhabits or where game is usually found, shall,

Fire-arms
in vehicles.

(a) carry a loaded air-gun, shot-gun, rifle or other fire-arm in or on, or discharge any of them from an aircraft, motor car or other vehicle;

Discharge of
fire-arms.

(b) discharge any air-gun, shot-gun, rifle or other fire-arm from or across any public road, highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, used or intended for use by the public for the passage of vehicles. 1946, c. 33, s. 56 (1), *amended*.

Loaded
fire-arms.

(2) An air-gun, shot-gun, rifle or other fire-arm carrying loaded shells or cartridges in the magazine shall be deemed to be loaded within the meaning of clause *a* of subsection 1. 1946, c. 33, s. 56 (2).

Use of
aircraft.

59. Aircraft shall not be used in connection with hunting operations except as a means of transportation between a settlement or base of operations and a hunting camp that is authorized to operate under any licence, or that is situated on patented land, or that is established on Crown land by Crown authority. 1949, c. 37, s. 16.

Automatic
shot-gun.

60.—(1) No person shall hunt any animal or bird with repeating, automatic or auto-loading shot-gun which has not been permanently plugged or altered so that it is incapable of holding a total of more than three shells at one time in the chamber and magazine. 1946, c. 33, s. 57 (1), *part*; 1949, c. 37, s. 17 (1).

Use of
rifle
restricted.

(2) No person, in those parts where pheasant may be legally taken, killed or shot, shall hunt any protected or unprotected animal or bird with a rifle or possess a rifle for that purpose during the open season for pheasants. 1946, c. 33, s. 57 (1), *part*.

Certain
employees
not to carry
fire-arms.

(3) No person, being engaged in cutting timber for any purpose or in any mining operation or in the construction or maintenance of any railway or public work, shall possess, during any close season for deer or moose any gun or other

fire-arm, or at any time any poison, snare or trap, in the vicinity of the timber or mining operation, railway or public work, as the case may be, or in or in the vicinity of any dwelling place or structure used in connection therewith unless authorized by the Minister, but this subsection shall not apply to a farmer who does not afford living accommodation to persons engaged in cutting timber or in mining operations or in the construction or maintenance of a railway or public work.

(4) No person, being employed by a railway company, shall possess any gun or other fire-arm, poison, snare or trap on a railway velocipede or hand-car. 1950, c. 22, s. 18 (1). Idem.

(5) No person, on Crown lands in any Crown game preserve, shall possess any game, or possess or use any fire-arm, trap or snare or any other instrument for hunting, trapping, catching or killing any bird or animal except as permitted by this Act. 1950, c. 22, s. 18 (2). Crown lands.

(6) The Minister may authorize any person within the meaning of subsection 3 to possess any gun or other fire-arm, poison, snare or trap. 1950, c. 22, s. 18 (3). Possession of guns, etc., under subs. 3, may be authorized.

(7) Subsection 3 shall not apply during the open season for deer or moose to any person who is licensed to hunt deer or moose. 1950, c. 22, s. 18 (4). Application of subs. 3.

61. Notwithstanding clause *a* of subsection 1 of section 58, section 59 and subsection 5 of section 60, predatory animals may be hunted from aircraft, motor cars or other vehicles in such areas and subject to such terms and conditions as may be permitted in writing by the Minister. 1949, c. 37, s. 18, *part*. Hunting predatory animals.

62.—(1) No person with any sporting implement or fishing rod or tackle in his possession, shall enter or allow any dog to enter into any growing or standing grain or any other crop, whether of the same kind or not, without the permission of the owner. 1946, c. 33, s. 58 (1). Entrance upon growing crops.

(2) No person shall trespass upon, or without authority enter upon the lands owned by the Crown that are designated as experimental fur-farms, bird-farms or trout-rearing stations, or climb over, break or cut through the fences surrounding such lands for the purpose of entering upon them. Trespassing on experimental fur-farms, etc.

(3) No person shall tear down, remove, injure, deface or interfere with any notice or sign put up, posted or placed by the Department. 1950, c. 22, s. 19. Destruction, etc., of departmental notices.

Transfer
of right or
privilege.

63.—(1) No person shall sublet, transfer or assign any right, interest or privilege granted to or conferred upon him under this Act, without the written consent of the Minister.

Cancellation
of licence in
event of
error.

(2) The Deputy Minister may, subject to appeal to the Minister, cancel any licence where an error has been made when issuing it from any cause, but the holder shall have no claim for indemnity or compensation with respect to it other than the adjustment and refund of any excess fee collected. 1946, c. 33, s. 59.

Food
falsely
described.

64. No hotel, restaurant, boarding-house, camp or club shall serve as a part of a meal any game or fish under any pretended name, or serve under a false name any article of food classified as any game or fish the sale of which is prohibited under this Act. 1946, c. 33, s. 60.

Shipping
coupons
and seals.

65.—(1) There shall be issued with every hunting licence one or more shipping coupons or seals with which any game taken under the licence may be shipped during the open season for the game or within four days thereafter, provided that game birds may be so shipped at any time within the then current year. 1950, c. 22, s. 20.

Detachment
and cancellation
of coupons
upon shipment
of big game.

(2) Where any deer or moose, or any part of them, taken under a licence for which a shipping coupon is provided, is presented for shipment to a common carrier, a coupon shall be detached from the licence and signed by the holder of the licence in the presence of the shipping agent or clerk in charge of the office at the point of shipment and attached to each animal or part thereof or to the receptacle containing it, and then the shipping agent or clerk shall write "cancelled" across the face of the coupon, but where the animal or any part of it is transported by other than a common carrier the coupon shall be attached to the animal or part of it and similarly cancelled by the holder of the licence before transporting it. 1946, c. 33, s. 61 (2); 1948, c. 35, s. 16 (2).

When seal
to be
attached
to moose.

(3) Where a moose is killed under a licence for which a metal seal is provided, the seal shall be attached to the moose immediately after it is killed.

When seal
to be
attached
to deer.

(4) Where a deer is killed under a licence for which a metal seal is provided, the seal shall be attached to the deer before it is transported or shipped. 1948, c. 35, s. 16 (3).

Offences
related to
shipping.

(5) No person shall violate any of the provisions of subsection 1, 2, 3 or 4, or use an expired coupon or seal, or transport or ship, or assist in transporting or shipping any

moose or deer without a coupon or seal attached thereto. 1948, c. 35, s. 16 (4).

66. No person employed by a railway company, express company, or other common carrier or engaged in the business of cold storage, or lumbering, or dealing in game and fish, or in charge of any camp near any fishery or near any place which game inhabits or where game is usually found, or holding a licence, or owning or in charge of a motor vehicle or aircraft, shall refuse to allow an officer to enter and inspect any railway car, building, premises, enclosure, or motor vehicle, or aircraft, or any receptacle for the purpose of examining all game and fish taken, and all implements and appliances for hunting and fishing, or refuse an officer examination of any book, invoice or document containing any entry or memorandum relating to game and fish which the officer suspects of being killed or possessed in violation of this Act, but he shall afford every reasonable facility for the examination and upon refusal the officer may, without a search warrant, break any lock or fastening that may be necessary in order to conduct the examination. 1946, c. 33, s. 62.

67. Where a seizure of game is made, any officer may remove to safe keeping any books or records kept in accordance with the requirements of this Act or the regulations. 1949, c. 37, s. 18, *part*.

68.—(1) No railway or express company, or other common carrier, or any other person shall ship or transport or cause to be shipped or transported, or receive or possess for shipment or transport,

- (a) any deer or moose, or the head or any other part thereof, unless there is attached thereto or to the receptacle containing the same a shipping coupon or seal provided for under this Act or the regulations; of deer or moose;
- (b) the head or antlers of any moose, unless there are produced at the same time at least the hind quarters of the carcass to which the head or antlers belonged; of moose head or antlers;
- (c) any deer or moose or any part of them during the closed season or after the expiry of the shipping coupon or seal attached thereto, except under a licence; or of big game in closed season;
- (d) fish or game caught, taken or killed within Ontario at a time or in a manner prohibited by law. 1946, c. 33, s. 63 (1); 1948, c. 35, s. 17. of fish or game illegally taken.

Carcass
concealed
during
transport.

(2) No person shall during the transporting of any deer or moose or the head or other part of them, conceal or attempt to conceal the whole or any part of the carcass.

Transport
of deer,
moose, etc.,
without
shipping
coupon.

(3) The Department may issue at any time a licence to transport deer or moose or any part of them, upon proof by affidavit or statutory declaration satisfactory to the Department that the deer, moose or part thereof has been lawfully taken. 1946, c. 33, s. 63 (2, 3).

Receptacles
to be
marked.

69.—(1) All receptacles in which game or fish or pelts or the skins of any other protected animals are packed for transportation, including transportation by hand or otherwise, shall be plainly marked on the outside in such a manner as to give a list and description of the contents and the name and address of the consignee and consignor.

Shipment
of pelts.

(2) Shipments of pelts shall be made by express or parcel post only, and no shipment of pelts shall be made by aircraft or in any other manner not provided for in this subsection, except under the authority of a licence. 1946, c. 33, s. 64.

Transport
of game
or fish
under
licence.

70. The Department may issue licences, not inconsistent with any law of Canada, to export from Ontario or to transport within Ontario, at any time, any game or fish, whether dead or alive. 1946, c. 33, s. 65.

Refund of
fees.

71. The Deputy Minister may direct the refund of the whole or any part of the fee paid for any licence, where, owing to the licence not having been used, or having been used for part only of the period for which it was issued, he deems it just, and the Treasurer of Ontario, upon the written request of the Deputy Minister, shall cause the refund to be made to the holder of the licence. 1946, c. 33, s. 66; 1947, c. 40, s. 14.

Revenue.

72. Save as otherwise provided by this Act all rentals, licence fees, fines, penalties, proceeds of the sales of game and fish, and of all articles confiscated, and other receipts, fees and revenue under this Act, or under any lease, licence or instrument by this Act authorized, shall be paid to the Treasurer of Ontario. 1946, c. 33, s. 67.

PROCEDURE

Prosecu-
tions.

73.—(1) Prosecutions for offences against this Act or for the recovery of penalties imposed by it, may be brought and heard before any magistrate for the county, district, village, town or city in which the offence was committed, but where the offence was committed near or on a boundary line between

two counties or between two districts or between a county and a district the prosecution may be brought and heard before a magistrate in either of them.

(2) The information upon which the prosecution is based shall be laid within twelve months after the commission of the offence, except where the prosecution is for omission to make any return required by this Act. Limitation.

(3) A violation of this Act or of the regulations or of the terms or conditions of a licence shall be, and may be stated as, an offence against this Act. Offences.

(4) The description of an offence in the words of this Act or of the regulations, or in any words to the like effect shall be sufficient, and an information may be for more than one offence. Description of offence.

(5) A violation of this Act shall constitute a separate offence in respect to each animal or bird which is the subject of the prosecution. Multiple offences.

(6) Where in any prosecution under this Act it appears in evidence that more than one offence of the same kind was committed at the same time, or on the same day, the court shall in one conviction impose all the penalties at the same time. Similar offences on the same day.

(7) The court shall in the conviction adjudge that the person accused and found guilty be imprisoned for a term not exceeding two years, unless the penalty and the costs of prosecution and committal and of conveying him to prison are sooner paid. Committal.

(8) A conviction or order made under this Act, either originally or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction, against which a person has a right of appeal, shall not be removed, at the instance of any person or of the Crown into the Supreme Court by *certiorari* or otherwise. Defects of form.

(9) *The Summary Convictions Act* shall apply to all prosecutions under this Act, except where it is otherwise provided. Procedure. Rev. Stat., c. 379.
1946, c. 33, s. 68.

EVIDENCE

74. In actions and prosecutions under this Act with respect to, Onus of proof.

- (a) taking, killing, procuring or possessing any game or fish, or any part of either of them, the onus shall be upon the person charged to prove that the game or

fish or any part of either of them was lawfully taken, killed, procured or possessed by him;

- (b) setting a net, fishing device or other article, the finding of any of them set in violation of this Act shall be *prima facie* evidence of the guilt of the person owning, possessing or operating any of them;
- (c) hunting or trapping, the possession in or near any place which game inhabits or where game is usually found, of a gun, decoy or other implement for hunting or trapping, shall be *prima facie* evidence that the person in possession of any of them was hunting or trapping, as the case may be; or
- (d) making of returns by licensees, the production of a return made by a licensee shall be *prima facie* evidence of the making of such return and the contents thereof. 1946, c. 33, s. 69; 1948, c. 35, s. 18; 1949, c. 37, s. 19.

PENALTIES

Penalties.

75.—(1) Every person who commits an offence against this Act with respect to,

- (a) deer, moose, caribou or wapiti shall be liable to a penalty,
 - (i) of not less than \$200 and not more than \$500 for each caribou or female moose the subject of the prosecution,
 - (ii) of not less than \$100 and not more than \$300 for each male moose the subject of the prosecution, or
 - (iii) of not less than \$50 and not more than \$200 for each deer or wapiti the subject of the prosecution;
- (b) otter, fisher or marten or their pelts, other than the exporting of any of them, shall be liable to a penalty of not less than \$20 and not more than \$100 for each animal or pelt the subject of the prosecution;
- (c) the exporting of otter, fisher or marten or their pelts shall be liable to a penalty of not less than \$30 and not more than \$200 for each animal or pelt the subject of the prosecution;
- (d) beaver or their pelts, other than the exporting of them, shall be liable to a penalty of not less than \$50

and not more than \$100 for each animal or pelt the subject of the prosecution;

- (e) the exporting of beaver or their pelts shall be liable to a penalty of not less than \$50 and not more than \$200 for each animal or pelt the subject of the prosecution;
- (f) mink or muskrat or their pelts, shall be liable to a penalty of not less than \$5 and not more than \$25 for each mink, muskrat or pelt the subject of the prosecution; or
- (g) any fur-bearing animal upon which a royalty is levied under section 28 other than beaver, fisher, marten, mink, muskrat or otter, shall be liable to a penalty of not less than \$1 and not more than \$20 for each animal or pelt the subject of the prosecution. 1946, c. 33, s. 70 (1); 1949, c. 37, s. 20; 1950, c. 22, s. 21 (1, 2).

(2) Every person who violates the terms or conditions of his licence shall be liable to a penalty of not less than \$10 and not more than \$300. Violation of terms of licence.

(3) Every person who commits an offence against section 69 with respect to the shipment of pelts by aircraft or by any other manner not provided for in that section, shall be liable to a penalty of not less than \$50 and not more than \$500. Shipment of pelts of animals by aircraft. 1946, c. 33, s. 70 (2, 3).

(4) Every person who commits an offence against subsection 2 of section 9 or subsection 5 of section 60 shall be liable to a penalty of not less than \$50 and not more than \$500. Fire-arms on Crown game preserves. 1946, c. 33, s. 70 (4); 1950, c. 22, s. 21 (3).

(5) Every person who commits an offence against this Act with respect to maskinonge shall be liable to a penalty of not less than \$10 and not more than \$100 for each maskinonge the subject of the prosecution. Maskinonge. 1946, c. 33, s. 70 (5).

(6) Every person who commits an offence against subsection 2 of section 62 shall be liable to a penalty of not less than \$100 and not more than \$500. Trespass on Crown property. 1946, c. 33, s. 70 (6); 1950, c. 22, s. 21 (4).

(7) Every person who commits an offence against subsection 7 of section 6 shall be liable to a penalty of not less than \$100 and not more than \$500. Interference with officers.

(8) Every person who commits an offence against subsection 7 of section 23 shall be liable to a penalty of not less than \$20 and not more than \$100. Multiplicity of licences.

General
penalty.

(9) Except as herein otherwise provided, every person who commits an offence against this Act shall be liable to a penalty of not less than \$10 and not more than \$100.

Second and
subsequent
offences.

(10) Every person who, after having been convicted of an offence against this Act, within two years again offends against this Act, shall be liable to a penalty of not less than double the minimum penalty provided for the offence, and upon a third or subsequent conviction at any time thereafter shall be liable to a penalty of not less than the maximum penalty provided for the offence.

Remission
of reduction
of penalties.

(11) No court shall remit any penalty or reduce the amount of the penalty after conviction, but if the penalty exceeds \$200 the Minister may remit the excess.

Offence in
provincial
parks.

(12) Where an offence against this Act is committed in a provincial park or within one mile thereof, the minimum and maximum penalties incurred shall be increased to double the amount set forth in this section for that offence. 1946, c. 33, s. 70 (7-12).

Seizure
and con-
fiscation of
game and
other
property.

76.—(1) All motor vehicles, or vehicles of any description, aircraft, guns, ammunition, traps, trapping accessories, snares, boats, rafts, skiffs, canoes, punts and vessels of every description, decoys, nets, rods, lines, tackle, and all fishing gear, materials, implements or appliances of every kind used for hunting and fishing, and all game and fish, together with packages, crates or containers of every description used in violation of this Act and found in the possession of any person suspected of having committed an offence against this Act shall be seized, and upon conviction, be forfeited to and become the property of the Crown in right of Ontario and sold by the Department, but where the seizure is made from a person unknown, perishable game or fish shall be forfeited to and become the property of the Crown in right of Ontario and sold forthwith by the Department, and any other property seized shall be forfeited to and become the property of the Crown in right of Ontario and sold by the Department after the expiration of thirty days. 1946, c. 33, s. 71 (1); 1948, c. 35, s. 19.

Unlicensed
seines to
be seized.

(2) If a seine net that has been found in or near waters in which fishing by seines is permitted is not claimed within two days by a person holding a licence to fish with a seine net, or has been found in or near waters in which fishing by seines is prohibited, shall be seized and forfeited to and become the property of the Crown in right of Ontario and sold by the Department.

(3) Where the Minister is satisfied that the seizure of any property other than game or fish would work undue hardship or injustice and the value of the property is more than \$100, the Minister may grant relief from forfeiture and direct its return to the person from whom it was taken upon such terms as he may deem just. ^{Relief from forfeiture.}

(4) The Deputy Minister may after a conviction authorize any officer to destroy any property forfeited, the possession of which is at all times unlawful, or any property having no commercial value, and also authorize any perishable game or fish to be given to a charitable institution. ^{Disposal of certain properties seized.}

(5) A licence held by a person convicted of an offence against this Act or the Special Fishery Regulations shall be deemed to be cancelled without further action or notice, but the Minister may revive the licence where there has been no conviction for an offence against this Act during the period of two years immediately preceding the cancellation. 1946, c. 33, s. 71 (2-5). ^{Cancellation and revival of licence after conviction.}

REGULATIONS

77. The Lieutenant-Governor in Council may make Regulations. ^{Regulations.}
regulations,

- (a) governing the issue, form, renewal, transfer, refusal and cancellation of licences under this Act and the Special Fishery Regulations, prescribing their duration, territorial limitation, terms and conditions, and the fees payable in respect to them, where those fees are not prescribed by this Act; 1946, c. 33, s. 72, cl. (a).
- (b) respecting the issue of licences to trap fur-bearing animals on Crown lands, providing for the transfer of such licences, prescribing the conditions governing such transfers and dividing Ontario or any part thereof into trap-line areas and designating such areas by identifying numbers and initials;
- (c) respecting any licence issued under subsection 2 of section 11, and to provide limitations with respect to the area in which such licence shall be valid. 1949, c. 37, s. 21 (1).

- (d) prescribing the terms and conditions governing the issue of a licence other than a trapper's licence to a person under the age of sixteen years; 1946, c. 33, s. 72, cl. (b).
- (e) prescribing the manner in which game shall be sealed or marked; 1948, c. 35, s. 20 (1).
- (f) providing that every person holding any lease or licence under this Act, and all fish companies and fish dealers, keep such records and make such reports and returns as may be prescribed; 1946, c. 33, s. 72, cl. (c).
- (g) authorizing townships or township organizations approved by the Minister to issue and charge fees for licences to hunt, during the open season, pheasants, rabbits and foxes and with the approval of the Minister to limit the number of such licences within the township or within the lands controlled by the township organizations; 1949, c. 37, s. 21 (2).
- (h) authorizing the council of any county to declare open seasons for the hunting of foxes at any time from the 1st day of March to the 31st day of October in any year; 1947, c. 40, s. 15, *part*; 1948, c. 35, s. 20 (2); 1950, c. 22, s. 22 (1).
- (i) for granting without fee a licence to a guest of Ontario to angle and hunt; 1946, c. 33, s. 72, cl. (e).
- (j) governing the issue, form, refusal, suspension or cancellation of tourist outfitters' camp licences, prescribing specifications for such camps, the terms and conditions under which such camps may be erected, maintained and operated and providing for their inspection and classification and the registration of tourists and guides in such camps; 1949, c. 37, s. 21 (3), *part*.
- (k) prescribing a closed season for, and restricting the taking of, frogs and setting apart suitable waters for their propagation; 1946, c. 33, s. 72, cl. (f).
- (l) designating water areas in which non-resident owners, operators or persons in charge of in-board motor boats used for angling shall employ licensed guides; 1949, c. 37, s. 21 (3), *part*.

- (m) restricting or prohibiting the possession of air-guns, guns, rifles or other fire-arms in any part of Ontario in which it may appear desirable to take special means to prevent violations of this Act; 1946, c. 33, s. 72, cl. (g).
- (n) prescribing the conditions under which birds, fur-bearing animals and game may be taken or killed in provincial parks, providing for and regulating the possession or use of traps, fire-arms, explosives or weapons in provincial parks, and prohibiting the use of motor boats for trolling in provincial parks; 1947, c. 40, s. 15, *part*; 1950, c. 22, s. 22 (2).
- (o) authorizing and regulating the sale of game imported into Ontario and lawfully hunted, killed or procured according to the law of the place in which the same was killed or procured; 1946, c. 33, s. 72, cl. (h).
- (p) varying the open season for any game in any part of Ontario and varying the part of Ontario in which any such open season shall apply; 1948, c. 35, s. 20 (3).
- (q) designating parts of Ontario in which no person shall hunt, take, pursue, kill, wound or destroy any game at any time of the year, subject to such exceptions as may be deemed reasonable;
- (r) prohibiting for a period of not more than three years at a time the hunting, purchase, sale or possession in any part of Ontario of any game bird, non-game bird or any insectivorous bird, where they are not protected by the *Migratory Birds Convention Act* <sup>R.S.C. 1927.
c. 130.</sup> (Canada);
- (s) governing or prohibiting the purchase and sale of or traffic in quail, partridge, pheasants or other game birds not protected by the *Migratory Birds Convention Act* (Canada);
- (t) exempting Indians in the northerly or north-westerly or any sparsely settled parts of Ontario whether organized or unorganized, from any provisions of this Act; 1946, c. 33, s. 72, cls. (j-m).
- (u) permitting residents of any province extending a similar right to Ontario residents to be classed as Ontario residents for the purpose of any specified licence under this Act; 1949, c. 37, s. 21 (3), *part*.

- (v) for making, keeping, searching for, obtaining and taking over all archives, records, books, regulations, Orders in Council, documents and accounts in the custody of the Government of Canada or of the Government of Ontario, or otherwise existing, in any way relating to the game or fisheries of Ontario;
 - (w) prescribing royalties;
 - (x) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1946, c. 33, s. 72, cls. (*n-p*).
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CHAPTER 154

The Gaming Act

1. Every agreement, note, bill, bond, confession of judgment, *cognovit actionem*, warrant of attorney to confess judgment, mortgage, or other security, or conveyance, the consideration for which, or any part of it, is money or other valuable thing won by gaming, or playing at cards, dice, tables, tennis, bowls, or other game, or by betting on the sides or hands of the players, or for reimbursing, or repaying, any money knowingly lent or advanced for such gaming, or betting, or lent, or advanced, at the time and place of such game or play, to any person so gaming, playing, or betting, or who, during such game or play, so plays, games, or bets, shall be deemed to have been made, drawn, accepted, given, or executed for an illegal consideration. R.S.O. 1937, c. 297, s. 1.

Security given in gaming transaction, given for illegal consideration.
9 Anne, c. 19, (or c. 14 in Ruffheads Ed.), s. 1, as amended by 2 Ed. VII., c. 1, s. 8.

2. If any person makes, draws, gives, or executes, any note, bill, or mortgage, for any consideration which is hereinbefore declared to be illegal, and actually pays to any endorsee, holder, or assignee of such note, bill, or mortgage, the amount of the money thereby secured or any part thereof, such money shall be deemed to have been paid for and on account of the person to whom such note, bill, or mortgage was originally given, and to be a debt due and owing from such last named person to the person who paid such money, and shall accordingly be recoverable by action. R.S.O. 1937, c. 297, s. 2.

Recovery of money paid on gaming transaction. Imp. Act 5 & 6 W. IV., c. 41, s. 2.

3. Any person who, at any time or sitting, by playing at cards, dice, tables, or other game, or by betting on the sides or hands of the players, loses to any person so playing or betting, in the whole, the sum or value of \$40 or upwards, and pays or delivers the same or any part thereof, shall be at liberty, within three months thereafter, to sue for and recover the money or thing so lost and paid or delivered. R.S.O. 1937, c. 297, s. 3.

Recovery of money lost at one sitting to the extent of \$40 or more.
9 Anne, c. 19 (or c. 14 in Ruffhead's Ed.), s. 2.

4. Every contract or agreement by way of gaming or wagering shall be null and void, and no suit shall be brought or maintained for recovering any sum of money or valuable thing alleged to be won upon any wager, or which has been deposited in the hands of any person to abide the event on which any wager has been made, but this section shall not apply to

Payment of wagers not enforceable. Imp. Act 8 & 9 V., c. 109, s. 18.

any subscription or contribution, or agreement to subscribe or contribute for or towards any plate, prize, or sum of money to be awarded to the winner of any lawful game, sport, pastime or exercise. R.S.O. 1937, c. 297, s. 4.

Promises to
repay sums
paid under
contract void
by section 4.

5. Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by section 4, or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract or agreement, or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money. R.S.O. 1937, c. 297, s. 5.

Imp. Act 55
& 56 V.,
c. 9, s. 1.

CHAPTER 155

The Gas and Oil Leases Act

1. In this Act,

Interpre-
tation.

- (a) "gas or oil lease" includes any agreement, whether by way of option, lease, grant or otherwise, granting the right to operate lands for the production and removal of natural gas or petroleum or both, except a grant to so operate where the amount or payment of the consideration therefor is not dependent upon the operation of such lands or upon the production of gas or oil or upon the amount of gas or oil produced, and "lessee" and "lessor" have a corresponding meaning and include heirs, successors, administrators, executors and assigns of the lessee or lessor as the case may be;
- (b) "judge" means judge of the county or district court of the county or district in which the land is situate. 1943, c. 7, s. 1.

2.—(1) Where the lessor of any land alleges that a lessee has made default under the terms of a gas or oil lease affecting the land in that, Inquiry as to default.

- (a) he has failed to commence to drill a well for natural gas or petroleum and has failed to pay rentals in lieu thereof; or
- (b) having drilled a well for natural gas or petroleum, he has failed to operate the well and has failed to pay rentals, royalties or other remuneration,

and that the default has continued for a period of three years, the lessor may apply, upon affidavit, to a judge for an order declaring the lease null and void and vacating the registration thereof.

(2) The judge shall, in writing, appoint a time and place at which he will inquire and determine whether default has been made as aforesaid. Judge to inquire into default.

(3) A notice in writing of the time and place appointed, together with a copy of any affidavit used upon the application, shall be served upon the lessee either by delivering them Notice of inquiry.

to him, leaving them at his place of abode or sending them to him by prepaid registered mail at his address as indicated in the lease, or at his last known address, or in such other manner and at such other address as the judge may direct, not less than thirty days before the return of the appointment.

Service of
appoint-
ment.

(4) Where an assignment or transfer of the lease has been registered in the registry office or land titles office for the registry division or county, district or city in which the lands are situate, the appointment shall be served upon the assignee or transferee, instead of the original lessee, in the manner prescribed in subsection 3. 1943, c. 7, s. 2.

Style of
proceedings.

3. The proceedings shall be entitled in the county or district court of the county or district in which the land lies, and shall be styled:

"In the matter of, Lessor,
and, Lessee." 1943, c. 7, s. 3.

Where
lessee fails
to appear.

4.—(1) If at the time and place appointed the lessee fails to appear and if it appears to the judge that default as indicated in clause *a* or *b* of subsection 1 of section 2 has continued for a period of three years, he may, notwithstanding any provision in the gas or oil lease requiring the lessor to give notice to the lessee of any default, make an order declaring that the gas or oil lease is null and void and vacating the registration thereof.

Where lessee
appears.

(2) If the lessee appears the judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter and if it appears to the judge that default as indicated in clause *a* or *b* of subsection 1 of section 2 has continued for a period of three years he may, notwithstanding any provision in the gas or oil lease requiring the lessor to give notice to the lessee of any default, make an order declaring that the gas or oil lease is null and void and vacating the registration thereof.

Description
of land.

(3) Every order shall contain a description of the land affected or a reference to the lease so terminated by its recorded number. 1943, c. 7, s. 4.

Irregular-
ities in
procedure.

5. The judge shall have the same power to amend or excuse irregularities in the proceedings as he would have in an action. 1943, c. 7, s. 5.

Drilling
not to be
taken into
account.

6. Any drilling done or sought to be done and any rentals or other remuneration tendered but not accepted after the making of the application shall not be taken into account by the judge upon the hearing of the application. 1943, c. 7, s. 6.

7. An appeal shall lie to the Court of Appeal from the order Appeal.
of the judge granting or refusing an order under section 4.
1943, c. 7, s. 7.

8. A copy of any order made under section 4, certified by the Registration
clerk of the county or district court under the seal of the of order.
court, shall, upon payment of the prescribed fee, be recorded by
the registrar of deeds or the local master of titles of the
registry office or land titles office for the registry division or
county, district or city in which the land is situate and in
the case of a registry office particulars thereof shall be entered
in the proper abstract index. 1943, c. 7, s. 8.

CHAPTER 156

The Gasoline Handling Act**1. In this Act,**Interpre-
tation.

- (a) "gasoline" includes any liquid produced, prepared or compounded for the purpose of generating power by means of internal combustion or that may be used for such purpose, except the product commonly known as kerosene or coal oil when such product is not mixed or combined with gasoline as described by this clause;
- (b) "Minister" means Minister of Highways;
- (c) "person" includes firm, partnership, corporation, club, association and syndicate;
- (d) "regulations" means regulations made under this Act.
R.S.O. 1937, c. 332, s. 1, amended.

2.—(1) No person shall offer for sale or sell gasoline, kerosene or distillate in Ontario unless licensed so to do by the Minister. Licence to sell gasoline.

(2) No person, other than a railway company, shall transport gasoline, kerosene or distillate in Ontario unless licensed so to do by the Minister. Licence to transport gasoline.

(3) Where it appears to the satisfaction of the Minister that a vendor of kerosene or distillate is retailing such products for domestic purposes other than the generating of power by means of internal combustion, and the quantity of such products retailed by him during the calendar year is not in excess of one thousand gallons, the Minister may exempt the vendor from this section. Exemption.

(4) Every person who violates any of the provisions of this section shall be guilty of an offence and on summary conviction shall be liable for a first offence to a penalty of not less than \$25 and not more than \$100, or to a term of imprisonment of not less than ten days and not more than one month, or to both, Penalty.

and for a second or subsequent offence, to a penalty of not less than \$100 and not more than \$500, or to a term of imprisonment of not less than one month and not more than six months, or to both. R.S.O. 1937, c. 332, s. 2.

Licence to
mix
gasoline.

3.—(1) No person shall mix, combine or compound any constituent of gasoline with any other substance or material whether a constituent of gasoline or not, for the purpose of offering the mixture, combination or compound for sale unless licensed so to do by the Minister.

Penalty.

(2) Every person who violates subsection 1 shall be guilty of an offence and on summary conviction shall be liable for a first offence to a penalty of not less than \$100 and not more than \$500, or to a term of imprisonment of not less than one month and not more than three months, or to both, and for a second or subsequent offence to a penalty of not less than \$500 and not more than \$1,000, or to a term of imprisonment of not less than three months and not more than six months, or to both. R.S.O. 1937, c. 332, s. 3.

Powers of
Minister.

4. The Minister may grant or refuse to grant a licence under this Act to any person and may revoke or suspend any licence issued under this Act. R.S.O. 1937, c. 332, s. 4, *amended*.

Returns as
to sale, etc.,
of gasoline.

5. Every person who, in Ontario, during any calendar month has manufactured gasoline, or has combined or compounded any constituent of gasoline with any other substance or material whether a constituent of gasoline or not, for the purpose of offering the mixture, combination or compound for sale, or has imported gasoline into Ontario, or usually manufactures or imports gasoline, shall within ten days immediately following the end of such calendar month, furnish to the Minister a return in such form as may be prescribed by the regulations. R.S.O. 1937, c. 332, s. 5.

Returns of
persons
receiving
importa-
tions of
gasoline.

6. When gasoline is shipped from a place out of Ontario to a place within Ontario, by means of a carrier, the person receiving the gasoline in Ontario shall obtain and retain the bill of lading issued for the shipment and show it to any officer of the Department of Highways having general charge of the carrying out of this Act and the regulations, on his request, provided that the inspection shall be made within two years from the receiving of the gasoline, and when the shipment is made by land or water by means of a conveyance belonging to or controlled by the shipper or by the consignee, the person receiving the gasoline in Ontario shall state in his return to the Minister the means of conveyance, the points of shipment and destination, and if the shipment is made by water, the

name of the vessel in which it is made. R.S.O. 1937, c. 332, s. 6.

7. Every person who during any calendar month transports gasoline from a place out of Ontario into Ontario, shall within ten days immediately following the end of such calendar month furnish to the Minister a return in such form as may be prescribed by the regulations showing the quantity of gasoline so transported and the name of the person to whom it is delivered in Ontario. R.S.O. 1937, c. 332, s. 7. Returns of transporter.

8. No provision of this Act shall be interpreted as forbidding the continuous transportation of gasoline with or without trans-shipment through Ontario from a place out of Ontario to any other place out of Ontario, provided that the transportation of any gasoline without a bill of lading evidencing shipment from a place out of Ontario to any other place out of Ontario, shall create a *prima facie* presumption that the gasoline is intended for delivery within Ontario. R.S.O. 1937, c. 332, s. 8. Exception as to shipments through Ontario.

9.—(1) The Minister may require any manufacturer, importer, jobber or vendor of gasoline to instal, at his own expense, automatic meters or other apparatus approved by the Minister. Installation of mechanical appliances.

(2) The use of such meters or other apparatus shall be subject to the control of the Minister who may also at any time require the use of such other apparatus or devices as he may deem advisable. R.S.O. 1937, c. 332, s. 9. Approval of apparatus by Minister.

10. Every officer of the Department of Highways having general charge of the carrying out of this Act and the regulations, and every inspector and any other person specially authorized by the Minister, may, Inspection.

- (a) enter, at any reasonable hour, the premises of any manufacturer, importer, jobber or vendor of gasoline and examine all books and records, take measurements and otherwise obtain all information from such manufacturer, importer, jobber or vendor and the servants, agents and employees of such manufacturer, importer, jobber or vendor as he may deem necessary or desirable; and
- (b) take from any premises or conveyance samples or specimens of any liquid which he has reason to believe is, or contains gasoline, distillate or kerosene. R.S.O. 1937, c. 332, s. 10.

Power to close premises for contravention of Act.

11. In addition to any other remedies given by this Act in the case of any person selling gasoline without having a subsisting licence under this Act, any person acting under the authority and instructions of the Minister may close the place or places of business of such person and prevent any sale of gasoline by him until he has complied with this Act and the regulations. R.S.O. 1937, c. 332, s. 11.

Regulations.

12. The Lieutenant-Governor in Council may make regulations,

- (a) providing for the appointment of such inspectors, officers and other persons as may be necessary for the proper carrying out of this Act and the regulations;
- (b) providing for the issuing of licences authorized by this Act and for the production or posting thereof and prescribing the fees payable therefor;
- (c) prescribing the records and books relating to gasoline, kerosene and distillate to be kept by any person or class of persons whether or not such person or class of persons is licensed under this Act;
- (d) providing for the making of returns and statements by any person or class of persons whether or not such person or class of persons is licensed under this Act;
- (e) exempting any person or class of persons from the operation of or compliance with this Act or the regulations, or of any of the provisions thereof;
- (f) requiring that all gasoline stored or offered for sale in Ontario shall be graded according to such scale as the regulations may prescribe;
- (g) requiring importers, manufacturers, jobbers and vendors of gasoline to indicate the grade and price of gasoline offered for sale;
- (h) fixing the grade or quality of gasoline which may be offered for sale;
- (i) providing for the sealing of pumps, tanks, reservoirs and other containers of gasoline;
- (j) prescribing the construction, equipment and operation of conveyances and containers used for the transportation and storage of gasoline, kerosene and distillate; R.S.O. 1937, c. 332, s. 12, cls. (a-j).

(k) prescribing the method, manner and equipment to be used in the handling, storing, selling and disposing of gasoline, kerosene and distillate; 1938, c. 14, s. 2.

(l) providing for the holding of inquiries into the operation of this Act and into any charge or complaint that any person has violated or failed to observe any provision of this Act or the regulations, or has made any false statement in any return or statement required to be made by this Act or the regulations, or into any other matter arising in the administration of this Act, and providing that the person holding such inquiry shall have all the powers that may be conferred upon a commissioner under *The Public Inquiries Act* including the power to take evidence under oath; Rev. Stat., c. 308.

(m) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1937, c. 332, s. 12, cls. (k, l).

13. Every person who signs any return or statement required by this Act or the regulations containing any false statement shall be guilty of an offence and on summary conviction shall be liable for a first offence to a penalty of not less than \$100 and not more than \$1,000, or to a term of imprisonment of not less than one month and not more than six months, or to both, and for a second or subsequent offence, to a penalty of not less than \$500 and not more than \$5,000, or to a term of imprisonment of not less than six months and not more than three years, or to both. R.S.O. 1937, c. 332, ss. 13, 16 (2), *part*. Penalty for making false return.

14. Every person who violates any of the provisions of this Act or the regulations for which no other penalty is provided shall be guilty of an offence and on summary conviction shall be liable for a first offence to a penalty of not less than \$25 and not more than \$100, or to a term of imprisonment of not less than ten days and not more than one month, or to both, and for a second or subsequent offence to a penalty of not less than \$100 and not more than \$500, or to a term of imprisonment of not less than one month and not more than six months, or to both. R.S.O. 1937, c. 332, ss. 14, 16 (2), *part*. Penalty for violation of Act or regulations.

15.—(1) No person employed by the Government of Ontario shall communicate or allow to be communicated to any person not legally entitled thereto, any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act. Information under Act to be secret.

Penalty. (2) Every person who violates this section shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$200. R.S.O. 1937, c. 332, ss. 15, 16 (2), *part*.

Information or complaint within three years.

16.—(1) Any information or complaint with respect to any violation of this Act or the regulations may be laid or made within three years from the time when the matter of such information or complaint arose. R.S.O. 1937, c. 332, s. 16 (1).

Recovery of penalties.

(2) The penalties imposed by this Act shall be payable to the Minister. R.S.O. 1937, c. 332, s. 16 (2), *amended*.

CHAPTER 157

The Gasoline Tax Act

1. In this Act,

Inter-
pretation.

- (a) "gasoline" includes any liquid produced, prepared or compounded for the purpose of generating power by means of internal combustion or that may be used for such purpose, except the product commonly known as kerosene or coal oil when such product is not mixed or combined with gasoline as described by this clause;
- (b) "Minister" means Minister of Highways;
- (c) "purchaser" means any person purchasing or receiving delivery in Ontario of gasoline for his own use;
- (d) "regulations" means regulations made under this Act. R.S.O. 1937, c. 32, s. 1, amended.

2. Every purchaser of gasoline shall pay to the Minister ^{Tax payable by purchaser.} for the use of the Crown in right of Ontario, a charge or tax at the rate of eleven cents per imperial gallon on all gasoline purchased or delivery of which is received by him. R.S.O. 1937, c. 32, s. 2; 1947, c. 41, s. 1.

3. The Lieutenant-Governor in Council may make ^{Regulations.} regulations,

- (a) providing for the collection of the charge or tax imposed by this Act and designating the persons by whom the same shall be collected; R.S.O. 1937, c. 32, s. 3, cl. (a).
- (b) prescribing the remuneration to be paid to persons charged with the collection of the charge or tax;
- (c) requiring the furnishing of surety bonds by persons charged with the collection of the charge or tax and prescribing the form and amount of such bonds; 1946, c. 35, s. 1 (1).

- (d) providing for the accounting for and paying over of any sums of money collected by or payable to the persons charged with the collection of the charge or tax imposed by this Act and regulating the time and manner of such accounting and payment;
- (e) prescribing the returns and statements to be made by importers, manufacturers, vendors and purchasers of gasoline, the information to be given in such returns and statements and by whom and in what manner they shall be made; R.S.O. 1937, c. 32, s. 3, cls. (b, c).
- (f) exempting any class of persons from the payment of the charge or tax imposed by this Act; 1946, c. 35, s. 1 (2).
- (g) refunding any charge or tax paid under this Act, or any portion thereof to any purchaser or class of purchasers and prescribing the records and material to be furnished upon any application for a refund; R.S.O. 1937, c. 32, s. 3, cl. (d); 1946, c. 35, s. 1 (3).
- (h) providing for the appointment of such inspectors, officers and other persons as may be necessary for the proper carrying out of this Act and the regulations;
- (i) providing for the holding of inquiries into the operation of this Act and into any charge or complaint that any person has violated or failed to observe any provision of this Act or the regulations, or has made any false statement in any return or statement required to be made by this Act or the regulations, or into any other matter arising in the administration of this Act, and providing that the person holding such inquiry shall have all the powers that may be conferred upon a commissioner under *The Public Inquiries Act* including the power to take evidence under oath;
- (j) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1937, c. 32, s. 3, cls. (e-g).

Rev. Stat.,
c. 308.

Penalty
for making
false
return.

4. Every person charged with the collection of the charge or tax imposed by this Act and every officer, agent or employee of every such person who signs any return or statement required by this Act or the regulations, containing any false statement shall be guilty of an offence and on summary conviction shall be liable for a first offence to a penalty of not less than \$500 and not more than \$5,000, or to a term of imprison-

ment of not less than six months and not more than three years, or to both, and for a second or subsequent offence to a penalty of not less than \$1,000 and not more than \$10,000 or to a term of imprisonment of not less than one year and not more than seven years, or to both. R.S.O. 1937, c. 32, ss. 4, 7 (2).

5. Every person who violates any of the provisions of this Act or the regulations, for which no other penalty is provided, shall be guilty of an offence and on summary conviction shall be liable for a first offence to a penalty of not less than \$25 and not more than \$100, or to a term of imprisonment of not less than ten days and not more than thirty days, or to both, and for a second or subsequent offence to a penalty of not less than \$100 and not more than \$500 or to a term of imprisonment of not less than thirty days and not more than six months, or to both. R.S.O. 1937, c. 32, ss. 5, 7 (2); 1943, c. 9, s. 2. Penalty for violation of Act or regulations.

6.—(1) No person employed by the Government of Ontario shall communicate or allow to be communicated to any person not legally entitled thereto, any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act. Information under Act to be secret.

(2) Every person who violates this section shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$200. R.S.O. 1937, c. 32, ss. 6, 7 (2). Penalty.

7.—(1) Any information or complaint with respect to any violation of this Act or the regulations may be laid or made within three years from the time when the matter of such information or complaint arose. R.S.O. 1937, c. 32, s. 7 (1). Information or complaint within three years.

(2) The penalties imposed by this Act shall be payable to the Minister. R.S.O. 1937, c. 32, s. 7 (2), *amended*. Disposition of penalties.

CHAPTER 158

The General Sessions Act

1. In this Act, "court" means court of general sessions of the peace. R.S.O. 1937, c. 104, s. 1. Interpretation.
2. The courts of general sessions of the peace shall have jurisdiction to try all criminal offences except homicide, and the offences mentioned in section 583 of the *Criminal Code* (Canada). R.S.O. 1937, c. 104, s. 2. R.S.C. 1927 c. 36.
- 3.—(1) Except where otherwise provided, in each year the sittings of the court shall be held in every county commencing on the first Monday in June and December. R.S.O. 1937, c. 104, s. 3 (1); 1942, c. 34, s. 15 (1). Sittings, general rule.
- (2) In the county of Carleton the sittings of the court in each year shall commence on the first Monday in April and the third Monday in October. O.Reg. 251/48, *part, amended*. Exceptions, Carleton.
- (3) In the county of Essex the sittings of the court in each year shall commence on the first Monday in April and the third Monday in November. O.Reg. 113/50, *part, amended*. Essex;
- (4) In the county of Middlesex the sittings of the court in each year shall commence on the first Monday in June and the second Monday in November. R.S.O. 1937, c. 104, s. 3 (6), *part*; O.Reg. 113/50, *part, amended*. Middlesex;
- (5) In the county of Simcoe the sittings of the court in each year shall commence on the first Monday in June and the third Monday in October. O.Reg. 275/48, *part, amended*. Simcoe;
- (6) In the county of Wentworth the sittings of the court in each year shall commence on the last Wednesday in February and November and on the first Wednesday in May and September. O.Reg. 11/49, *part, amended*. Wentworth;
- (7) In the county of York the sittings of the court in each year shall commence on the first Monday in December, March and May and on the second Tuesday in September. R.S.O. 1937, c. 104, s. 3 (4), *amended*. York.
- (8) The judges of the county court district may postpone the date of any sittings provided the postponement does not, in Postponement of sittings.

the opinion of the judges, conflict or interfere with the sittings of the Supreme Court in such county court district.

Notice of
postpone-
ment.

(9) Where any such sittings is so postponed, notice of the postponement and of the date upon which the sittings shall commence shall be posted in the office of the county court clerk in every county in the county court district not later than sixty days before the commencement of such postponed sittings. R.S.O. 1937, c. 104, s. 3 (2, 3).

Lieutenant-
Governor
may specify
opening day.

(10) When it is deemed necessary or expedient in respect of any county the Lieutenant-Governor in Council may specify a different opening day for the sittings of the court from those provided in this section, in which case the sittings shall be held on the day specified. 1948, c. 36, s. 1.

Concurrent
sittings.

4. In any county two or more concurrent sittings of the court may be held for the trial of cases with or without a jury and the hearing of appeals. R.S.O. 1937, c. 104, s. 3 (7).

Place of
sittings.

5. The sittings of the court shall be held in the county town of the county, unless the Lieutenant-Governor, by proclamation, authorizes the holding of the sittings at some other place in the county. R.S.O. 1937, c. 104, s. 4.

Sittings in
provisional
judicial
districts.

6. In the provisional judicial districts sittings of the court shall be held at the same time and place as the sittings of the district courts for the trial of issues of fact and assessment of damages with or without a jury. R.S.O. 1937, c. 104, s. 5.

Who may
preside.

7. The judge of the county or district court as the case may be, or a junior or deputy judge shall be the chairman of the court and shall preside at the sittings thereof. R.S.O. 1937, c. 104, s. 6.

Presence of
justice
unnecessary.

8. Where a judge is present it shall not be necessary in order to constitute the court that a justice of the peace be present. R.S.O. 1937, c. 104, s. 7.

When
adjournment
permitted.

9.—(1) Where a judge is unable to hold the sittings at the time appointed the sheriff or his deputy may, by proclamation, adjourn the court to any hour on the following day to be by him named, and so from day to day until a judge is able to hold the court or until he receives other directions from the judge or from the Attorney-General.

Attorney-
General to
be notified.

(2) The sheriff shall forthwith give notice of such adjournment to the Attorney-General. R.S.O. 1937, c. 104, s. 8.

10.—(1) Subject to the approval of the Lieutenant-Governor in Council, the Rules Committee may,

Power of
Rules
Committee
as to,

- (a) make rules for regulating the practice and procedure in the county and district courts; rules of
practice;
 - (b) make rules and regulations regulating and fixing all fees payable to the Crown in respect of proceedings in such courts; fees of
Crown;
 - (c) prescribe a tariff of fees to be allowed to solicitors and counsel practising in such courts; fees of
solicitors;
 - (d) prescribe forms for use in such courts. R.S.O. 1937, forms.
c. 104, s. 11 (1); 1941, c. 21, s. 2.
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CHAPTER 159

The Ginseng Act

1. Except for the purpose of clearing or bringing land into cultivation no person shall, between the 1st day of January and the 1st day of September in any year, cut, root-up, gather or destroy the plant known as ginseng growing in a wild or uncultivated state. R.S.O. 1937, c. 347, s. 1. Destruction of ginseng prohibited.

2. No person shall purchase ginseng knowing the same to have been cut, rooted-up, or gathered between the 1st day of January and the 1st day of September in any year. R.S.O. 1937, c. 347, s. 2. Purchasing with knowledge of illegal gathering.

3.—(1) Every person who contravenes any of the provisions of this Act shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$5 and not more than \$20. Penalty and recovery.

(2) One-half of the penalty shall be paid to the prosecutor unless otherwise ordered by the convicting justice. R.S.O. 1937, c. 347, s. 3. Application of penalty.

4. Evidence of the purchase or sale of ginseng between the 1st day of January and the 1st day of September shall be *prima facie* proof of a contravention of this Act. R.S.O. 1937, c. 347, s. 4. Proof of purchase or sale.

5. In any prosecution for a contravention of section 2 evidence that the ginseng purchased has been illegally obtained by the vendor shall be *prima facie* proof of a contravention of this Act by the purchaser. R.S.O. 1937, c. 347, s. 5. Proof of illegal gathering.

CHAPTER 160

The Gold Clauses Act

1. Every obligation heretofore or hereafter incurred, and whether such obligation is due, accruing due or past due, which gives or purports to give the obligee a right to require payment in gold or in a particular kind or standard of coin or currency, or in an amount of money of the Dominion of Canada or elsewhere measured in gold or in a particular kind or standard of coin or currency shall be discharged upon payment, dollar for dollar, in any coin or currency, which at the time of payment is legal tender at the place of payment named in such obligation for public and private debts. R.S.O. 1937, c. 177, s. 1. Discharge
of obligations.

2. Notwithstanding that any obligation heretofore or hereafter incurred, whether such obligation is due, accruing due or past due, gives or purports to give the obligee the right to require payment in gold or in a particular kind or standard of coin or currency, or in an amount of money of the Dominion of Canada or elsewhere measured in gold or in a particular kind or standard of coin or currency, no action shall be brought or maintained to enforce such obligation or to enforce any judgment obtained outside of Ontario based on any such obligation, except to the amount of the face value of such obligation, dollar for dollar, in any coin or currency which at the time of payment is legal tender at the place of payment named in such obligation for public and private debts. R.S.O. 1937, c. 177, s. 2. No action
to be
brought.

3. This Act shall apply to all obligations governed by the law of Ontario, including obligations of the Crown. R.S.O. 1937, c. 177, s. 3. Scope of
Act.

CHAPTER 161

The Government Contracts Hours and Wages Act**1. In this Act,**Interpre-
tation.

- (a) "fair wages" means such wages as are generally accepted as current for competent workmen in the district in which the work is being performed for the character or class of work in which such workmen are respectively engaged, but shall in all cases be such wages as are fair and reasonable;
- (b) "Government of Ontario" includes every department thereof and every commission or board created by any Act of the Legislature;
- (c) "Minister" means Minister of Labour or such other member of the Executive Council as may be for the time being charged with the administration of this Act;
- (d) "regulations" means regulations made under this Act. R.S.O. 1937, c. 199, s. 1.

2.—(1) Every contract entered into with the Government of Ontario for the construction, remodelling, renewal, repair or demolition of any building or work shall be subject to the following conditions respecting wages and hours:

Government
contracts
for work
subject to
certain
conditions.

- 1. All persons in the employ of the contractor, sub-contractor or any other person doing or contracting to do the whole or any part of the work contemplated by the contract shall during the continuance of the work be paid fair wages.
- 2. The working hours of persons while so employed shall not exceed eight hours per day or forty-four hours per week except in such special cases as the Lieutenant-Governor in Council may otherwise provide, or except in cases of emergency as may be approved by the Minister.

(2) This section shall not apply to the purchase of materials, supplies or equipment for use in the work contemplated under any contract of sale and purchase. R.S.O. 1937, c. 199, s. 2.

Exception.

Wages and
hours where
Government
aid granted.

3.—(1) Whenever a grant or payment of any public moneys of Ontario is authorized or made by way of contribution, subsidy, loan, advance or guarantee for or in aid of the construction, remodelling, renewal, repair or demolition of any building or work, whether such grant or payment is to be received by any municipal or other body or person whatever, the wages and hours of all workmen employed on such work shall be those set forth in subsection 1 of section 2.

Exception.

(2) This section shall not apply to the purchase of materials, supplies or equipment for use in the work contemplated under any contract of sale and purchase. R.S.O. 1937, c. 199, s. 3.

Penalties.

4.—(1) Every contractor, subcontractor, municipal or other body and every person who is responsible, directly or indirectly, for the payment of wages, who fails to comply with any of the provisions of this Act or the regulations shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$50 and not more than \$500.

Disposition
of penalties.

(2) The penalties provided by this Act shall be payable to the Treasurer of Ontario. R.S.O. 1937, c. 199, s. 4.

Regulations.

5. The Lieutenant-Governor in Council may make regulations providing for,

- (a) the method of determining what are fair wages and the preparation and use of schedules of rates relating thereto;
- (b) rates of wages for overtime;
- (c) classification of employment or work;
- (d) the persons or classes of persons who may be employed in the performance of any work mentioned in this Act;
- (e) the publication and posting of wage schedules;
- (f) the payment of wages to employees in case of default by the contractor or other party charged with such payment and recovery thereof from such contractor or other party;
- (g) the keeping of proper books and records and the examination and inspection thereof;
- (h) the furnishing of such information as may be required

by the Minister to ensure compliance with the provisions of this Act;

- (i) any other matter necessary or advisable to carry out effectively the intent and purpose of this Act and the regulations. R.S.O. 1937, c. 199, s. 5, *amended*.

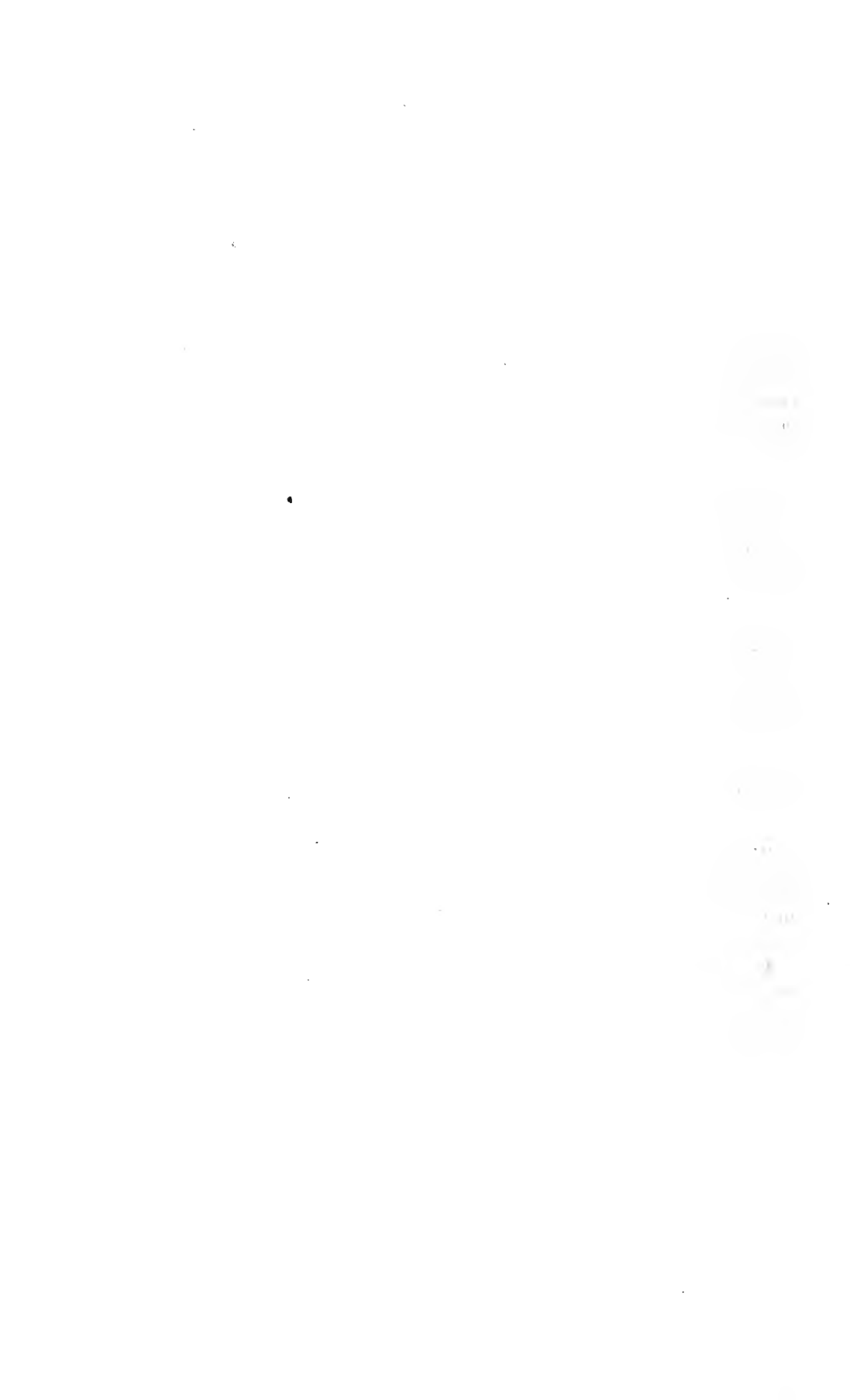
6. This Act and the regulations shall be read and construed subject to *The Industrial Standards Act*, *The Minimum Wage Act* and *The Public and Other Works Wages Act* and any regulations and schedules made thereunder. R.S.O. 1937, c. 199, s. 6.

Act to be
subject to
provisions of
Rev. Stat.,
cc. 179, 235,
313.

CHAPTER 162

The Guarantee Companies Securities Act

- 1.** In this Act, "guarantee company" means an incorporated company approved by the Lieutenant-Governor in Council and empowered to grant guarantees, bonds, policies or contracts for the integrity and fidelity of employed persons, or in respect of any legal proceedings or for other like purposes. 1946, c. 89, s. 21 (1). Interpretation.
- 2.** Where any judge, functionary, officer or person is entitled or required to take security by bond with sureties he may in lieu thereof take the bond, policy or guarantee contract of a guarantee company of the like nature and effect. R.S.O. 1937, c. 263, s. 2. Bonds of guarantee company may be taken by officers and others.
- 3.** Where any person is required to give security by bond with sureties he may in lieu thereof furnish the bond, policy or guarantee contract of a guarantee company of the like nature and effect. R.S.O. 1937, c. 263, s. 3. Persons may give bond of guarantee company.
- 4.** The guarantee company shall not be bound or required to justify. R.S.O. 1937, c. 263, s. 4. Justification not required.
- 5.** The bond, policy or guarantee contract of a guarantee company may be taken instead of or in substitution for any existing security if the judge, functionary, officer or person mentioned in section 2 so directs. R.S.O. 1937, c. 263, s. 5. Bond of company may be substituted for other bonds.
- 6.** The interim receipt of a guarantee company may be accepted in lieu of a bond, policy or guarantee contract, but the latter shall be furnished within one month. R.S.O. 1937, c. 263, s. 6. Interim receipt in lieu of bond.
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CHAPTER 163

The Habeas Corpus Act

1.—(1). Where a person, other than a person imprisoned for debt, or by process in any action, or by the judgment, conviction or order of the Supreme Court, court of general sessions of the peace or other court of record is confined or restrained of his liberty, a judge of the Supreme Court, upon complaint made by or on behalf of the person so confined or restrained, if it appears by affidavit that there is reasonable and probable ground for the complaint, shall award a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody or power the person so confined or restrained is, returnable immediately before the judge so awarding the same, or before any judge of the Supreme Court or before the Court of Appeal. R.S.O. 1937, c. 129, s. 1 (1).

In what cases
hab. corp. ad
subjiciendum
may be
awarded,
and by
whom.

(2) Notice in writing of every application for a writ of *habeas corpus ad subjiciendum* shall be given to the Attorney-General at least forty-eight hours before the making of the application and the Attorney-General shall be entitled as of right to be heard either in person or by counsel upon the application. 1941, c. 55, s. 13 (1).

Notice of
application
for writ of
habeas
corpus.

(3) Instead of awarding the writ the judge before whom the application is made may direct that the motion for the writ be adjourned to be heard before the Court of Appeal. R.S.O. 1937, c. 129, s. 1 (2).

Order
adjourning
motion for
writ.

2. The writ may be served either personally by actual delivery thereof to the person to whom the same is directed or by leaving it with his servant or agent at the place where the person is so confined or restrained. R.S.O. 1937, c. 129, s. 2.

Service of
writ.

3. If the person to whom the writ is directed wilfully neglects or refuses to make a return or pay obedience thereto he shall be deemed guilty of contempt of court, and the court or judge, upon proof by affidavit of such wilful neglect, refusal or disobedience, may issue a warrant for apprehending and bringing him before the court or judge to the end that he may be bound to His Majesty with two sufficient sureties in such sum as in the warrant is expressed, conditioned that he will appear on the day named in the warrant to answer the matter of the contempt. R.S.O. 1937, c. 129, s. 3.

Disobedi-
ence of
writ.

Committal.

4. In case of neglect or refusal to become bound as aforesaid the court or judge may commit such person to the common jail of the county wherein he resides or may be found, there to remain until he becomes bound as aforesaid, or is discharged by order of the court or a judge, and if he becomes bound the recognizance shall be returned and filed and shall continue in force until the matter of the contempt has been heard and determined, unless sooner ordered by the court to be discharged. R.S.O. 1937, c. 129, s. 4.

Issue of writ of *certiorari*.

5. Where a writ of *habeas corpus* is issued under the authority of this Act or otherwise, the court or judge may direct the issue of a writ of *certiorari* directed to the person by whom or by whose authority any person is confined or restrained of his liberty, or other person having his custody or control, requiring him to certify and return to the court or judge as by the writ may be provided, all the evidence, depositions, conviction and all proceedings had or taken, touching or concerning such confinement or restraint of liberty. R.S.O. 1937, c. 129, s. 5.

Procedure on return of writ.

6. When upon a return to a writ of *habeas corpus* it is alleged that the person is detained by reason of a conviction or order other than a conviction or order of the Supreme Court or other court of record upon the return of the writ of *certiorari*, it shall be the duty of the court or judge to examine and consider the proceedings had and taken to ascertain if the proceedings show that the person restrained has been convicted of any offence against the law and that there is any evidence to sustain the conviction, or that upon the evidence the person accused is guilty of an offence against the law and that the conviction, though irregular, ought to be amended or drawn so as to duly describe the offence of which the person accused is guilty, and in such cases to remand the person detained to custody but otherwise to order his discharge. R.S.O. 1937, c. 129, s. 6.

Proceedings for inquiring into the truth of the matters alleged in the return.

7. Although the return to a writ of *habeas corpus* is good and sufficient in law the court or judge before whom the writ is returnable may examine into the truth of the facts set forth in the return, by affidavit or other evidence, and may order and determine touching the discharging, bailing or remanding the person. R.S.O. 1937, c. 129, s. 7.

Appeal from remandment to custody.

8.—(1) Where a person confined or restrained of his liberty is brought before a judge upon a writ of *habeas corpus* and is remanded into custody upon the original order or warrant of commitment or by virtue of any warrant, order or rule

of such judge, such person may appeal from the decision or judgment of the judge to the Court of Appeal, and thereupon the writ of *habeas corpus*, the return thereto, and the affidavits, depositions, evidence, conviction and other proceedings shall be certified by the proper officer to the Court of Appeal.

(2) The Court of Appeal shall thereupon hear and determine the appeal without formal pleadings, and if the court determines that the confinement or restraint is illegal shall so certify to the person having the custody or charge of the person so confined or restrained, and shall order his immediate discharge, and he shall be discharged accordingly. R.S.O. 1937, c. 129, s. 8. Court may order discharge.

9. The provisions of this Act shall extend to all writs of *habeas corpus* awarded in pursuance of the Act passed in England in the 31st year of the reign of King Charles the Second, commonly called *The Habeas Corpus Act*, or otherwise in as ample and beneficial a manner as if such writs and the cases arising thereon had been herein specially named and provided for. R.S.O. 1937, c. 129, s. 9. Application of Act.

(NOTE.—*See 29-30 Vict. c. 45, Canada.*)

10. Subject to the approval of the Lieutenant-Governor in Council, the Rules Committee may make such rules of practice in reference to the proceedings on writs of *habeas corpus* as may seem necessary or expedient. R.S.O. 1937, c. 129, s. 10; 1941, c. 55, s. 13 (2). Power to make rules.

CHAPTER 164

The Haliburton Act

1. Except where herein otherwise provided the Provisional County of Haliburton and the corporation and council thereof shall have and possess respectively all the rights, powers, liabilities and incidents of a county, county corporation and county council; and, except where inconsistent with this Act, the law and the statutes applicable to counties, county corporations and county councils, and the members of such councils, shall apply. R.S.O. 1937, c. 4, s. 1.

Rights, liabilities and powers of the Provisional County corporation and council.

2. No by-law for granting aid to any railway company, shall be valid unless, within three months from the passing thereof, it is approved by the Lieutenant-Governor in Council. R.S.O. 1937, c. 4, s. 2.

By-laws in aid of railways.

3. The meetings of the council shall be held at the place within the county where the registry office is kept. R.S.O. 1937, c. 4, s. 3.

Meetings of council.

4. For judicial purposes, including the holding of courts, the officers of such courts, judicial process and proceedings, and the selection of jurors, the Provisional County shall be united to and form part of the County of Victoria. R.S.O. 1937, c. 4, s. 4.

County to form part of Victoria for judicial purposes.

5. The justices of the peace appointed for the Provisional County shall be entitled to sit in the general sessions held for the County of Victoria. R.S.O. 1937, c. 4, s. 5.

Justices of the peace.

6. Where an appeal lies from the decision of a justice or justices of the peace to the general sessions of the peace, the appeal in a case arising in the Provisional County shall lie to and may be heard and determined by the Court of General Sessions of the Peace for the County of Victoria. R.S.O. 1937, c. 4, s. 6.

Appeal from decisions of justices of the peace.

7. All returns of convictions required by law to be made by a justice of the peace for the Provisional County shall be made to the clerk of the peace for the County of Victoria. R.S.O. 1937, c. 4, s. 7.

Returns of convictions.

Erection of
jails.

8. The Lieutenant-Governor in Council may from time to time direct that one or more suitable jails or lock-ups shall be provided by the Minister of Public Works in the Provisional County out of any money appropriated for that purpose. R.S.O. 1937, c. 4, s. 8.

Jails in
Haliburton
to be
common
jails of
Haliburton
and Victoria.

9. Every jail and lock-up erected under the authority of the Lieutenant-Governor in Council, shall be a common jail of the Provisional County and of the County of Victoria for the safe custody of persons charged with the commission, within the Provisional County, of crimes, or with the commission therein of offences against any statute of Ontario or against any municipal by-law, who may not have been finally committed for trial, and for the safe custody of such persons when finally committed for trial until removed to the common jail at Lindsay, and for the confinement of persons sentenced within the Provisional County for such crimes or offences for periods not exceeding one month, and for the confinement of persons so sentenced for periods exceeding one month until such persons can be conveniently removed to the common jail at Lindsay, or other lawful prison to which they are sentenced. R.S.O. 1937, c. 4, s. 9.

Power to
commit to
the jail at
Lindsay.

10. Nothing in section 9 shall prevent any court or justice of the peace from directing the committal to the common jail at Lindsay, either for safe custody or for punishment, of any person whom it may be considered expedient to commit thereto. R.S.O. 1937, c. 4, s. 10.

Appoint-
ment and
salary of
jailer.

11. The Lieutenant-Governor in Council may appoint the jailer, jail surgeon and other jail employees for the Provisional County, and fix their salaries which shall be paid by the Provisional County. 1949, c. 95, s. 7.

Contribution
by Halibur-
ton to
expenses of
administra-
tion of
justice.

12.—(1) The Provisional County shall bear and pay to the corporation of the County of Victoria its just share or proportion of all charges and expenses from time to time incurred in erecting, building and repairing and maintaining, enlarging or improving the court house and common jail at Lindsay and of the proper lighting, cleansing and heating thereof, and of providing all necessary and proper accommodation, fuel, light, stationery and furniture for the jail and courts of justice, other than the division courts, and for the library of the law association of the county and of providing proper offices, together with fuel, light, stationery and furniture for officers connected with such courts, where the same are required to be provided by the county council, and all other charges relating to criminal justice, payable by the county

in the first instance, except constables' fees and disbursements, and charges connected with coroners' inquests and such other charges as the counties are entitled to be repaid by the Province.

(2) The provisions of *The Municipal Act* with respect to the determination of the compensation to be paid by the corporation of a city or separated town to the corporation of the county in which for judicial purposes the city or town is situate shall apply to the determination of the compensation payable under this section. R.S.O. 1937, c. 4, s. 13.

13.—(1) An appeal shall lie from the decision of the court of revision of any municipality within the Provisional County to the judge of the county court of the County of Victoria. To whom appeal lies.

(2) The provisions of *The Assessment Act* with respect to appeals from the judge of the county court to the Ontario Municipal Board shall apply to the Provisional County. Application Rev. Stat., c. 24. R.S.O. 1937, c. 4, s. 14.

14. The registrar of deeds shall keep his office in a place to be named for that purpose in his commission, or at such other place as may be from time to time appointed by the Lieutenant-Governor in Council. Registry office. R.S.O. 1937, c. 4, s. 15.

15.—(1) In addition to the powers conferred by *The Municipal Act*, the council of any township or village in the Provisional County may pass by-laws for, Aid to grist mills by taking stock or lending money.

(a) granting aid to or for promoting the establishment of a grist mill in the township or village; Rev. Stat., c. 243.

(b) taking stock in any company incorporated for establishing a grist mill in the township or village; or

(c) lending money to any such company.

(2) The aid to be granted, the stock to be taken and the money to be lent under subsection 1 shall not in all exceed one-half of the actual cost of such grist mill or in any case the sum of \$3,000. Limit of aid.

(3) Notwithstanding anything in *The Municipal Act*, the vote in the affirmative of two-thirds of the electors actually voting upon any such by-law shall be necessary and sufficient to the carrying of the same. Assent of two-thirds of ratepayers voting. Rev. Stat., c. 243.

Restriction upon power to grant bonus.

(4) No such by-law shall be passed for or in respect of the establishment of a grist mill in a location less than fifteen miles from any grist mill established in the Provisional County and in operation on the 13th day of April, 1897.

Deciding disputes as to result of vote.

(5) In case of a dispute as to the result of the vote on any by-law the judge of the county court of the County of Victoria shall have the powers conferred by *The Municipal Act* upon the judge of a county court with respect to a scrutiny of the votes of electors upon a by-law.

Proceedings.

(6) The petition to the judge may be by an elector or by the council, and the proceedings for obtaining the judge's decision shall be the same as nearly as may be as in the case of a scrutiny.

Representation of council on board of directors.

(7) The council of a municipality taking stock in a company under the authority of this section shall annually, at its first meeting for the year, elect from among its members a representative of such council to the board of directors of the company, and such representative shall be entitled to sit and vote at all meetings of the board and to vote at all meetings of shareholders in respect of the stock held by the municipality which he represents.

Application of Rev. Stat., c. 243.

(8) Except as otherwise provided herein the provisions of *The Municipal Act* as to money by-laws and the obtaining of the assent of the electors thereto shall apply. R.S.O. 1937, c. 4, s. 16.

Educational grants.

Rev. Stat., cc. 66, 165, 413.

16. The liability of the Provisional County for the cost of education of county pupils within the meaning of *The Continuation Schools Act*, *The High Schools Act* and *The Vocational Education Act*, where such cost exceeds the continuation school and high school grants under *The Continuation Schools Act* and *The High Schools Act* shall be payable one-third by the county and two-thirds out of the provincial grants for secondary schools upon the requisition of the Minister of Education. 1938, c. 35, s. 9.

CHAPTER 165

The High Schools Act**1.—(1) In this Act,**Interpre-
tation.

- (a) "board" means board of high school trustees;
- (b) "county judge" and "judge" mean the senior judge of the county or district court of the county or district in which the high school is or is to be situate, or, if he is a member of the high school board or is unable to act or is disqualified, mean the junior judge of the county or district court, or if he is a member of the board or is unable to act or is disqualified, mean the judge of the county or district court of the adjoining county or district which has the largest population according to the last Dominion census; R.S.O. 1937, c. 360, s. 1 (1), cls. (a), (b).

- (c) "county pupils" means pupils,

(i) who reside with their parents or guardians, or

(ii) who or whose parents or guardians are assessed for an amount equal to the average assessment of the ratepayers,

in that part of a county which is not within a city or separated town or within a high school or grade A or grade B continuation school district, but does not include pupils residing with their parents or guardians on land which is exempt from taxation for school purposes, who and whose parents or guardians are not assessed for, and do not pay, taxes for school purposes in a municipality in the county; 1948, c. 37, s. 1 (1).

- (d) "Department" means Department of Education; R.S.O. 1937, c. 360, s. 1 (1), cl. (d).

- (e) "equalized assessment" has the same meaning as in *The Assessment Act*; 1947, c. 43, s. 1. Rev. Stat.,
c. 24.

- (f) "high school" includes a collegiate institute; R.S.O. 1937, c. 360, s. 1 (1), cl. (e).

- (g) "high school district" means the municipalities and parts of municipalities in which a board has jurisdic-

tion; R.S.O. 1937, c. 360, s. 1 (1), cl. (f); 1949, c. 38, s. 1 (1).

- (h) "maintenance" includes repairs to the teacher's residence, the school buildings, outhouses, gymnasium, fences and school furniture; altering the system of heating or ventilation; the erection of fences; the improvement of the school grounds and the grounds attached to the teacher's residence; insurance on the school property; salaries of the teachers, officers and other employees of the board; contributions to a superannuation or pension fund for the benefit of teachers, officers and other employees of the board; any sums spent for medical and dental inspection and dental treatment; fees payable in respect of resident pupils in attendance at high schools and continuation schools outside the high school district; the expense of conducting examinations; interest charges on temporary loans made for the purposes of the board and other expenses for ordinary school purposes, and for such annual additions to the library, apparatus and other appliances as may be required by the Minister or by the regulations; gratuities and retiring allowances granted to teachers, officers and other employees; the cost of providing transportation for pupils; R.S.O. 1937, c. 360, s. 1 (1), cl. (g); 1938, c. 35, s. 10 (2); 1944, c. 56, s. 3; 1950, c. 23, s. 1.
- (i) "Minister" means Minister of Education;
- (j) "municipality" includes a city, town, village or township but not a county;
- (k) "non-resident pupils" means pupils other than county pupils and resident pupils as defined herein; R.S.O. 1937, c. 360, s. 1 (1), cls. (h-j).
- (l) "perfect aggregate attendance" of pupils for a calendar year shall be calculated by multiplying the number representing the number of teaching days in the calendar year by the number representing the number of pupils registered at the school during such calendar year and deducting therefrom the number of pupil-days' non-attendance caused by,
- (i) quarantines,
 - (ii) observance of holy days,
 - (iii) deaths,

(iv) late registrations owing to transfer or age of pupils,

(v) termination of registrations owing to transfer or age of pupils,

(vi) expulsions, and

(vii) exclusions; 1945 (2nd Sess.), c. 8, s. 8.

(m) "permanent improvements" includes the purchase or rental of a residence for a teacher, or of a school site, the erection or rental of a schoolhouse, the enlargement of both or either of them, the erection of out-houses and gymnasium, and other buildings or fixtures to be used for the purpose of carrying on such school activities as are specified or permitted by the regulations, the purchase of school furniture, maps and apparatus, library, and all other appliances required by the regulations;

(n) "regulations" means regulations made by the Minister under *The Department of Education Act*; R.S.O. 1937, ^{Rev. Stat., c. 94.} c. 360, s. 1 (1), cls. (k, l).

(o) "resident pupils" means pupils,

(i) who reside with their parents or guardians, or

(ii) who or whose parents or guardians are assessed for an amount equal to the average assessment of the ratepayers,

within the limits of a high school district, but does not include pupils residing with their parents or guardians on land which is exempt from taxation for school purposes, who and whose parents or guardians are not assessed for, and do not pay, taxes for school purposes in a municipality within the district; 1948, c. 37, s. 1 (2).

(p) "separated town" means a town separated for municipal purposes from the county in which it is situate; 1949, c. 38, s. 1 (2).

(q) "urban municipality" means a city, town ^{or} village. R.S.O. 1937, c. 360, s. 1 (1), cl. (o).

(2) Where reference is made to the population of a municipality or other locality or to a number of inhabitants or ratepayers the same shall be determined by the last enumeration by the assessor. ^{References to population.}

Certificate
of clerk to
be final.

(3) The certificate of the clerk of the municipality with respect to such population or number shall be final and conclusive. R.S.O. 1937, c. 360, s. 1 (2, 3).

HIGH SCHOOL CORPORATIONS

Trustees to
be corpora-
tion.

2.—(1) Where a high school district comprises one municipality, the trustees shall be a corporation by the name of "The High School Board of the of", or "The Collegiate Institute Board of the of", inserting the classification and name of the municipality.

Idem.

(2) Where a high school district comprises more than one municipality, the trustees shall be a corporation by the name of "The District High School Board" or "The District Collegiate Institute Board", inserting a name selected by the board and approved by the Minister. 1948, c. 37, s. 2.

Term of
office.

(3) The trustees of every high school district shall hold office until their successors are appointed and the new board is organized. R.S.O. 1937, c. 360, s. 2 (2)

HIGH SCHOOL DISTRICTS

Existing
high school
districts
confirmed.

3. Whenever a high school district has existed in fact for three months and upwards, and whether it has been formed in accordance with the provisions of the law or not, it shall be deemed to have been legally formed and shall continue to exist, subject, however, to the provisions of this Act as far as applicable, as if the district had been formed thereunder, unless in the meantime proceedings have been taken calling in question the legal status of the district and notice thereof has been given to the persons who ought, according to the practice of the court in which the proceedings are taken, to be served with notice thereof, and such proceedings result in its being determined that the district has not been legally formed. R.S.O. 1937, c. 360, s. 3.

Interpre-
tation.

4. In sections 5 to 11 inclusive, "adjoining" means touching at any point, and where more than two counties or municipalities are concerned they shall be deemed to be adjoining if each of such counties or municipalities adjoins one or more of the other counties or municipalities. 1947, c. 42, s. 1, *part*.

Establish-
ment and
discontin-
uance of
high school
districts.

5.—(1) Subject to the approval of the Minister first being obtained, the council of a county or the councils of two or more adjoining counties, may by by-law establish the whole

or any part of a municipality or the whole or parts of two or more adjoining municipalities situated within the county or counties as a new high school district, and the council of a county or the councils of two or more adjoining counties may in like manner discontinue any high school district already established within the county or counties.

(2) Subject to the approval of the Minister first being obtained, the council of a municipality or the councils of two or more adjoining municipalities in a territorial district may pass by-laws establishing the whole or any part of the municipality or municipalities as a new high school district.

(3) A by-law passed under subsection 1 or 2 shall be passed on or before the 1st day of July in any year, and shall take effect on the 1st day of January next following the passing of the by-law unless otherwise provided therein.

(4) The clerk of the municipality shall call the first meeting of a newly organized high school board, but where the new high school district extends beyond one municipality the clerk of the municipality having the largest population within the district, according to the last revised assessment roll, shall call the first meeting. 1947, c. 42, s. 1, *part*.

(5) The Lieutenant-Governor in Council may establish the whole or any part of an unorganized township or a town and the whole or any part of an unorganized township as a high school district. 1947, c. 42, s. 1, *part*; 1949, c. 38, s. 2.

6.—(1) No high school district shall be established for an area in which the enrolment of pupils in the public and separate schools is less than six hundred, unless the area contains more than fifteen school sections or is situated on an island.

(2) During the month of December in each year, every county clerk shall prepare a map of the county showing the boundaries of each high school district within or partly within the county as they will exist on the 1st day of January of the following year.

(3) Where a new high school district is established in a county or the boundaries of an existing high school district in a county are altered, the county clerk shall forward a copy of the by-law establishing or altering the district, not later than the 1st day of January next following the passing of the by-law, to,

(a) the Minister;

- (b) the secretary of the board of the new district or of the district of which the boundaries are altered; and
- (c) the clerk of each municipality which or any part of which is situated within the new district or the district of which the boundaries are altered. 1950, c. 23, s. 3.

Enlargement
of districts.

7.—(1) Subject to the approval of the Minister, the council of a county or the councils of two or more adjoining counties, in one or more of which a high school district has been established, may by by-law provide that the whole or any part of any municipality or municipalities situate within the county or counties and adjoining the high school district shall be added to the high school district. 1950, c. 23, s. 4.

In territorial
districts.

(2) Subject to the approval of the Minister, the council of a municipality or the councils of two or more adjoining municipalities, in a territorial district, may pass by-laws providing that the whole or any part of such municipality or municipalities shall be added to a high school district which has been established in one or more of such municipalities.

Assets and
liabilities
of original
board.

(3) Where a high school district is enlarged under subsection 1 or 2, the assets of the board of the district shall forthwith be vested in and the liabilities thereof shall forthwith become the liabilities of the board of the enlarged high school district, unless otherwise provided by the by-law or by-laws.

Time of
passing and
effective
date of
by-law.

(4) A by-law passed under subsection 1 or 2 shall be passed on or before the 1st day of July in any year, and shall take effect on the 1st day of January next following the passing of the by-law unless otherwise provided therein. 1947, c. 42, s. 1, *part*.

Decreasing
area of
districts.

8.—(1) Subject to the approval of the Minister, the council of a county or the councils of two or more adjoining counties which has or have established a high school district may by by-law detach from the high school district the whole or any part of any municipality which forms part thereof and shall add the municipality or part to another district, and any such by-law shall be passed on or before the 1st day of July in any year and shall take effect on the 1st day of January next following the passing of the by-law, unless otherwise provided therein. 1950, c. 23, s. 5.

Payment
of rates.

(2) Where a municipality or part of a municipality is detached from a high school district under subsection 1, such municipality or part shall not be relieved from any rates imposed for the payment of debentures or other debts incurred

while forming part of the district unless otherwise provided in the by-law or by-laws. 1947, c. 42, s. 1, *part*.

9.—(1) Subject to subsection 2, every city and separated town is hereby established as a high school district. 1947, c. 42, s. 1, *part*; 1950, c. 23, s. 6 (1). City and separated town a high school district.

(2) Subject to the approval of the Minister, the council of a city or separated town in a county may by by-law discontinue its high school district, and Discontinuing district in city or separated town.

(a) provide for the inclusion of such city or separated town in a new high school district; or

(b) provide that such city or separated town be added to an existing high school district.

(3) Subject to the approval of the Minister, the council of a city or separated town in a county may by by-law provide that the whole or part of a municipality or municipalities adjoining the city or separated town be added to the high school district of the city or separated town. Increasing district of city or separated town.

(4) A by-law passed under subsection 2 or 3 shall be passed on or before the 1st day of July in any year, and shall take effect on the 1st day of January next following the passing of the by-law, unless otherwise provided therein. 1947, c. 42, s. 1, *part*. Time of passing and effective date of by-law.

10.—(1) No by-law, Conditions re by-laws.

(a) passed under subsection 1 of section 5 establishing a new high school district, by which a city or separated town is included in the high school district; or

(b) passed under subsection 1 of section 7 adding a city or separated town to an existing high school district,

shall be effectual unless and until the council of the city or separated town passes a by-law under subsection 2 of section 9.

(2) No by-law passed under subsection 3 of section 9 adding the whole or part of one or more municipalities adjoining a city or separated town to the high school district of the city or separated town shall be effectual unless and until the council of the county or the councils of the counties, in which the municipality or municipalities to be added are situated, pass a by-law or by-laws under subsection 1 of section 7 1947, c. 42, s. 1, *part*. Idem.

Assets and liabilities of discontinued boards.

11. Where a high school district is discontinued and the municipality or municipalities comprising the district form part of a new high school district, or are included in an enlarged high school district, the assets of the board of the discontinued district shall forthwith be vested in and the liabilities thereof shall forthwith become the liabilities of the board of the new or enlarged high school district, as the case may be, unless otherwise provided in the by-laws discontinuing the high school district. 1947, c. 42, s. 1, *part.*

Establishment and maintenance of schools.

12.—(1) Every board shall establish and maintain a high or vocational school in the high school district in which it has jurisdiction and may establish and maintain such additional schools as the board may deem necessary, and, subject to section 48, may provide for the location, erection, maintenance and management of the schools so established.

Exceptions.

(2) Notwithstanding subsection 1,

- (a) the board of a district adjoining a city or separated town may, in lieu of establishing and maintaining a school, arrange for the instruction of its pupils at a high or vocational school in the city or separated town and may enter into an agreement with the board of the city or separated town to pay for the cost of their education;
- (b) the board of a district in a territorial district may, in lieu of establishing and maintaining a school, arrange for the instruction of its pupils at the nearest high or vocational school, and may enter into an agreement with the board of such school to pay for the cost of their education.

Where no school maintained.

(3) Subject to clause *a* of subsection 2, in the event of the failure of the board of a district in a county to operate a school for any period of two years, the county council or councils by which the district was established shall by by-law discontinue the district and include it in one or more adjoining districts. 1950, c. 23, s. 7.

COURSES OF STUDY

Collegiate institutes.

13.—(1) Any high school which complies with the regulations with respect to collegiate institutes may be raised to the rank of a collegiate institute by the Minister.

Reducing collegiate institutes.

(2) The Lieutenant-Governor in Council may, upon the report of the Minister, reduce a collegiate institute to the rank of a high school. R.S.O. 1937, c. 360, s. 8 (2. 3).

14.—(1) A board may establish classes in military instruction, appoint a qualified drill instructor and provide uniforms for such classes. Military instruction.

(2) A board may annually vote for each high school within its jurisdiction a sum not exceeding \$150 in the case of a school having an enrolment of not more than six hundred pupils, and a sum equal to an amount not exceeding twenty-five cents per pupil in the case of a school having an enrolment of more than six hundred pupils, for the encouragement of athletics and to defray the expenses of school games. R.S.O. 1937, c. 360, s. 9. Grants for athletics.

15. A high school board, a public school board and a continuation school board, or any one or more of such boards, may engage the services of any person holding the degree of Bachelor of the Science of Agriculture or other certificate of qualification from the Ontario Agricultural College and approved by the Minister to give instruction in agriculture to the pupils of their respective schools, and the instructor shall perform such duties, and the funds set apart for instruction in agriculture shall be expended for such purposes as may be prescribed by the regulations. R.S.O. 1937, c. 360, s. 10. Instruction in agriculture.

TRUSTEES

16.—(1) Any ratepayer of a municipality which, or any part of which, is included in the high school district, who is a British subject, has attained the age of twenty-one years, resides in the high school district or within five miles of the boundaries thereof, and who is not a member or officer of a municipal council or otherwise disqualified, shall be qualified to be a high school trustee. R.S.O. 1937, c. 360, s. 11 (1); 1948, c. 37, s. 3; 1949, c. 38, s. 3 (1). Qualification of trustees.

(2) Notwithstanding subsection 1, in the case of an appointment by a county council, any ratepayer of a municipality in the county who resides in the county and is otherwise qualified under subsection 1 shall be qualified to be a high school trustee. 1949, c. 38, s. 3 (2). County appointees.

(3) A person shall not be eligible to be appointed as a trustee or to sit or vote as a member of the board if any portion of the taxes levied for school purposes for the preceding year or years on the property in respect of which such person qualifies, are overdue or unpaid at the time of the appointment; provided that the provisions of this clause shall not apply where such person is a tenant of such property and the taxes in respect thereof are, under the terms of the tenancy, payable by the owner of the property. R.S.O. 1937, c. 360, s. 11 (2), *amended*. Trustee, not eligible where taxes unpaid.

Number of
trustees.

17. Every high school board shall consist of at least three trustees. R.S.O. 1937, c. 360, s. 12; 1938, c. 35, s. 13.

Appoint-
ment of
trustees,

18.—(1) Where a high school district comprises one or more municipalities not separated from the county for municipal purposes, or one or more municipalities in a territorial district, trustees shall be appointed by the council or councils of the municipality or municipalities included in the district as follows:

where one
municipality;

(a) where the district comprises only one municipality, the council shall appoint three trustees, one of whom shall retire each year;

where two
municipalities;

(b) where the district comprises two municipalities,

(i) the council of a municipality having a population within the district of 3,000 or more according to the last revised assessment roll shall appoint three trustees, and

(ii) the council of a municipality having a population within the district of less than 3,000 according to the last revised assessment roll shall appoint two trustees,

one of whom in each case shall retire each year; and

where more
than two
municipalities.

(c) where the district comprises more than two municipalities,

(i) the council of a municipality having a population within the district of 6,000 or more according to the last revised assessment roll shall appoint three trustees, one of whom shall retire each year,

(ii) the council of a municipality having a population within the district of 3,000 but less than 6,000 according to the last revised assessment roll shall appoint two trustees, one of whom shall retire each year, and

(iii) the council of a municipality having a population within the district of less than 3,000 according to the last revised assessment roll shall appoint one trustee who shall hold office for two years. 1947, c. 42, s. 2, *part*; 1949, c. 38, s. 4 (1).

Part of a
municipality
not deemed
a municip-
ality.

(2) A part of a municipality which is assessed for school purposes in the high school district for less than \$50,000 shall not be deemed a municipality for the purposes of this section. 1947, c. 42, s. 2, *part*.

(3) Where a high school district comprises a municipality or municipalities not separated from the county or counties for municipal purposes and a city or separated town, trustees shall be appointed by the council or councils of the municipality or municipalities not separated from the county or counties for municipal purposes as provided in subsection 1 and in addition the council of the city shall appoint six trustees, two of whom shall retire each year, or the council of the separated town shall appoint three trustees, one of whom shall retire each year, as the case may be. 1949, c. 38, s. 4 (2).

Where city or separated town included in district.

(4) Subject to section 19, in addition to the trustees appointed in accordance with subsections 1 and 3,

Appointment of additional trustees by county council.

(a) where the whole of the high school district is situated within one county, the council of the county may appoint one trustee who shall hold office for one year; or

(b) where the high school district comprises two or more counties or parts thereof, the council of the county having the largest population within the district according to the last revised assessment roll may appoint one trustee who shall hold office for one year.

(5) Where a high school district is enlarged or decreased, the trustees shall be appointed as if the enlarged or decreased district were a new district. 1947, c. 42, s. 2, *part*.

Trustees where district enlarged or decreased.

(6) Where a high school district is established under subsection 5 of section 5, the Lieutenant-Governor in Council may provide for the formation of a board, and the cost of operating the high school or high schools under the jurisdiction of the board shall be levied on all the property in the high school district rateable for school purposes, and the provisions of *The Public Schools Act* with respect to assessment and collection of rates for public school purposes in unorganized townships shall *mutatis mutandis* apply. 1948, c. 37, s. 4.

Formation of board and assessment in district in unorganized territory.

Rev. Stat., c. 316.

19.—(1) Where a majority of the members of a high school board or board of education favours the appointment of more than one trustee by a county council or councils, the board may,

Appointment of trustees by county council.

(a) where the whole of the high school district is situated within one county,

(i) request the council of the county to appoint three trustees instead of one, or

(ii) request the council or councils of not more than two adjoining counties each to appoint one trustee who shall hold office for one year; and

(b) where the high school district comprises two or more counties or parts thereof,

(i) request the council of the county having the largest population within the district according to the last revised assessment roll to appoint three trustees instead of one, or

(ii) request the council or councils of not more than two of the other counties within or partly within the district, each to appoint one trustee who shall hold office for one year. 1949, c. 38, s. 5.

Retirement.

(2) Where a county council appoints three trustees to a high school board or a board of education, one of such trustees shall retire each year.

Order of retirement.

(3) The county council shall, upon the appointment of three trustees to any high school board or board of education determine the order of their retirement.

Retirement upon repeal of request under subs. 1.

(4) Upon the repeal of any request made under subsection 1, the county council may determine the time at which each of the trustees appointed by it shall retire, provided that in such case no trustee shall hold office for a longer period than the term of his appointment. 1939, c. 44, s. 8 (2), *part*.

Trustees in cities and separated towns.

20.—(1) In a city and in a separated town the council shall appoint six trustees, and the trustees so appointed shall, with such additional trustees as are authorized by this Act, form the board.

Retirement by rotation.

(2) The council shall provide for the annual retirement of two of the trustees appointed by them so as to secure a complete rotation every three years. R.S.O. 1937, c. 360, s. 15.

Admission of county pupils to city or town school.

21. Where the board of a high school situate in a city or in a separated town notifies the county clerk that the high school is open to county pupils on the same terms as high schools in municipalities not separated from the county, the county council may, from time to time, appoint one additional trustee as provided by subsection 4 of section 18, for such high school so long as the school is open to county pupils on such terms, and such high school shall for all the purposes of this Act be considered a county high school. R.S.O. 1937, c. 360, s. 17 (1); 1938, c. 35, s. 15.

Order of retirement of trustees.

22. The council which has the power and duty of appointing high school trustees shall provide for the order of their retirement. R.S.O. 1937, c. 360, s. 18.

23.—(1) Where one separate school is maintained in a high school district, the board of separate school trustees may appoint to the board one trustee who shall not be a member of the separate school board and who shall hold office for one year. Representation of separate school boards.

(2) Where more than one separate school is maintained in a high school district, the board of trustees of the separate school or schools having the highest average attendance of pupils below grade IX for the preceding year, as certified by the separate school inspector, may appoint to the board one trustee who shall not be a member of the separate school board and who shall hold office for one year. 1947, c. 42, s. 3. Idem.

24.—(1) Where one public school is maintained in a high school district, the board of public school trustees may appoint to the board one trustee who shall not be a member of the public school board and who shall hold office for one year. Representation of public school boards.

(2) Where more than one public school is maintained in a high school district, the board of trustees of the public school or schools having the highest average attendance of pupils below grade IX for the preceding year, as certified by the public school inspector, may appoint to the board one trustee who shall not be a member of the public school board and who shall hold office for one year. Idem.

(3) In the case of the first board of a new high school district, in lieu of the appointment under subsection 2, where, Appointment to first board of new district.

(a) a board of education is being dissolved and the municipality or municipalities over which the board has jurisdiction are included in the new high school district; and

(b) the average attendance of pupils below grade IX for the preceding year in the school or schools under its jurisdiction, as certified by the public school inspector, exceeds the average attendance of such pupils in any public school section within the district,

the board of education may appoint to the board one trustee who shall not be a member of the board of education and who shall hold office for one year. 1947, c. 42, s. 4.

25.—(1) The first appointment of trustees of a new board shall be made, and vacancies arising from the annual retirement of trustees shall be filled, at the last regular meeting of the appointing body in the calendar year, and trustees shall take office on the 1st day of January in the following year. Time for appointment of trustees.

Idem.

(2) Where the appointing body fails to appoint a trustee or trustees under subsection 1, it shall make the appointment at its next regular meeting. 1949, c. 38, s. 7.

Vacancies
from other
causes.

(3) Vacancies arising from death, resignation, removal from the high school district or county or otherwise shall be filled forthwith by the appointing body, and the person appointed to fill the vacancy shall hold office for the unexpired term of the person whose place has become vacant. R.S.O. 1937, c. 360, s. 21 (2).

Where
separated
town is
reunited to
county.

(4) Where a separated town is reunited to the county one of the two trustees whose term of office shall first expire, to be selected by lot, shall retire as soon as the county council has appointed one trustee, and the remaining five trustees, together with the one trustee to be appointed by the county council, shall then constitute the board of the high school district. 1938, c. 35, s. 16.

MEETINGS OF BOARD

First meet-
ing of board.

26.—(1) Unless all the members of the new board have been appointed and a date for the first meeting has been decided upon by the old board, the first meeting of the board in each year shall be held at the hour of seven o'clock in the evening of the second Wednesday in January or at such other hour of the same day as may have been determined by resolution of the former board. R.S.O. 1937, c. 360, s. 22 (1); 1948, c. 37, s. 6.

Election of
chairman.

(2) At the first meeting in each year of every board, and whenever the office of chairman becomes vacant then at the first meeting of the board after the vacancy occurs, the members shall elect one of their number to be chairman.

Vice-
chairman.

(3) The members of the board may also elect one of their members to be vice-chairman, and he shall preside in the absence of the chairman.

Chairman
pro tem.

(4) If at any meeting there is no chairman or vice-chairman present the members present may elect a chairman for that meeting.

Secretary
and
treasurer.

(5) At the first meeting and as often as a vacancy occurs the board shall also elect a secretary and a treasurer or a secretary-treasurer who shall hold office during the pleasure of the board.

Secretary
pro tem.

(6) In the absence of the secretary from any meeting the chairman or other member presiding may appoint any member or person present to act as secretary for that meeting.

(7) The presence of a majority of all the members constituting the board shall be necessary to form a quorum.

(8) The secretary or secretary-treasurer shall preside at the first meeting until the chairman is elected, or if there is no secretary or secretary-treasurer then such member of the board shall preside as may be elected for that purpose.

(9) In case of an equality of votes at the election of chairman the trustee who is assessed for the largest sum on the last revised assessment roll shall have a second or casting vote.

Chairman at first meeting.
Equality of votes on the election of chairman.

(10) The presiding officer may vote with the other members of the board on all questions, and any question on which there is an equality of votes shall be deemed to have been negatived. R.S.O. 1937, c. 360, s. 22 (2-10).

In other cases.

SECURITY OF TREASURER AND SECRETARY-TREASURER

27.—(1) Every treasurer, secretary-treasurer and collector, and, if required by the board, every other officer of the board shall give security for the faithful performance of his duties.

Security by officers of board.

(2) The security to be given shall be by the bond, policy or guarantee contract of a guarantee company as defined in *The Guarantee Companies Securities Act*. 1950, c. 23, s. 8.

Form of security.
Rev. Stat., c. 162.

(3) Every treasurer and secretary-treasurer shall open an account in the name of the board in a chartered bank or in such other place of deposit as may be approved by the board, and shall deposit to the credit of such account all money received by him on account of the board. 1949, c. 38, s. 8 (2).

Bank account.

POWERS AND DUTIES OF BOARD

28. It shall be the duty of every board and it shall have power,

Duties of trustees,

(a) to fix the times and places for the meetings of the board and the mode of calling and conducting them, and to see that a full and correct account is kept of the proceedings thereat;

meetings of board;

(b) to see that the school is conducted according to this Act and the regulations;

conduct of school;

(c) to provide adequate accommodation according to the regulations for all pupils, and in its discretion to establish summer or vocational schools;

accommodation for pupils;

(d) if deemed expedient, to provide and maintain such equipment as may be deemed advisable and to operate the playground as a park or playground and rink

operation of play-grounds;

during the school term or in vacation or both, and to provide such supervision as the board may deem proper, provided the proper conduct of the school is not interfered with;

organiza-
tion and
operation of
gymnasium;

- (e) if deemed expedient, to organize and carry on gymnasium classes in the school building for pupils or others during the school term or in vacation or both, and to provide supervision and training for such classes, provided the proper conduct of the school is not interfered with;

charge of
high school;

- (f) to take charge of the school, to keep the school buildings and premises in proper repair, to provide suitable furniture and equipment and to protect the property of the board; R.S.O. 1937, c. 360, s. 24, cls. (a-f).

insurance;

- (g) to make provision for insuring adequately the school buildings and equipment; 1946, c. 37, s. 5 (1).

collection of
fees for
tuition;

- (h) subject to the provisions of this Act, to fix the amount to be paid by parents and guardians for each pupil attending the school, and the times of payment and, when necessary, to enforce payment thereof; R.S.O. 1937, c. 360, s. 24, cl. (g).

transporta-
tion of
pupils;

- (i) where the board deems it expedient, to provide and pay for the transportation of resident pupils to any high school or vocational school situated in the high school district or in another high school district or grade A or grade B continuation school district and, subject to the approval of the Minister, of county pupils who attend any high school or vocational school under the jurisdiction of the board, and for such purpose,
 - (i) to purchase out of current revenue or by the issue of municipal debentures, as authorized by this Act, a bus or buses or other vehicles, or
 - (ii) to enter into an agreement with any corporation, commission or person for the transportation of such pupils; 1948, c. 37, s. 7.

appoint-
ments;

- (j) to appoint a secretary and a treasurer or a secretary-treasurer and such committees, officers and other employees as may be deemed expedient;

security;

- (k) to take proper security from the treasurer or secretary-treasurer;

(l) to give the necessary orders upon the treasurer for the payment of gratuities or retiring allowances of teachers and the salaries of the teachers and other officers and servants of the board, and of such other expenses for promoting the interests of the school as may be authorized by the board; R.S.O. 1937, c. 360, s. 24, cls. (i-k). orders for salaries and expenses;

(m) to prepare and submit to the municipal council or councils liable under this Act on or before such times as the council may prescribe, estimates for the current year of all sums required to be provided by the council to meet expenditures for maintenance of the schools under the charge of the board during the current calendar year and for the payment of fees of resident pupils who may attend high schools or grade A or grade B continuation schools outside the high school district but which they may attend as resident pupils, and such estimates, estimates;

(i) shall show the amount of any surplus or deficit remaining at the end of the preceding year and the revenues estimated to be derived from legislative grants, any county or other municipality, fees and from all other sources, and

(ii) may include such additional sum as may be deemed expedient for permanent improvements to be made during the same period,

provided that the board of a high school district consisting of a municipality which has become subject to Part III of *The Department of Municipal Affairs Act* and which is unable to obtain the approval of the Ontario Municipal Board to the issuing of debentures for permanent improvements of a high school or high schools shall not include in its estimates any sum for permanent improvements without the approval of the municipal council concerned; 1946, c. 37, s. 5 (2). Rev. Stat., c. 96.

(n) to expel, on the report of the principal, any pupil whose conduct may be deemed injurious to the welfare of the school, and to exclude any pupil whose parents or guardians neglect or refuse to pay the fees of such pupil after reasonable notice; R.S.O. 1937, c. 360, s. 24, cl. (m). expulsion of pupils;

(o) subject to *The Teachers' Boards of Reference Act*, to appoint and remove such teachers, officers and servants as it may deem expedient, and to fix their salaries and prescribe their duties; 1949, c. 38, s. 9. appointment and removal of teachers, etc.; Rev. Stat., c. 383;

certify fees
received;

- (*p*) to certify to the treasurer of the county on or before the 1st day of August in each year the amount of fees collected from county pupils for the next preceding calendar year;

annual
report to
Minister;

- (*q*) to prepare and transmit on or before the 15th day of January in each year to the Minister the annual report in accordance with forms provided by the Department; R.S.O. 1937, c. 360, s. 24, cls. (*p-q*).

payment
of current
operating
costs and
borrowing
power.

- (*r*) to provide, in the case of a high school district which comprises two or more municipalities or parts thereof, for the payment of current operating costs, and if necessary to borrow on the promissory note of the board, under its corporate seal, at interest not exceeding eight per cent per annum, such moneys as may be required for that purpose until the current year's taxes and legislative grants have been received. 1947, c. 42, s. 5.

Powers
of trustees
re,
purchase of
books and
supplies;

29.—(1) The board may,

- (*a*) purchase for the use of any or all pupils text-books and other school supplies, and either furnish the same to them free of charge or collect for the use thereof from such pupils or their parents or guardians a sum not exceeding twenty-five cents per month for each pupil to defray the cost thereof;

penny
savings
bank;

- (*b*) provide books, stationery and other materials necessary in connection with the establishment and maintenance of a penny savings bank, or any system introduced for the encouragement of thrift and the habit of saving; R.S.O. 1937, c. 360, s. 25, cls. (*a, b*).

dental and
medical
inspection;

- (*c*) provide and pay for such medical and dental inspection of the pupils as the regulations may prescribe, or in the absence of regulations, as the board may deem proper, but only where provision for such medical and dental inspection was inaugurated by the board prior to the 31st day of December, 1941; R.S.O. 1937, c. 360, s. 25, cl. (*c*); 1942, c. 34, s. 16.

travelling
expenses
attending
educational
association;

- (*d*) pay the travelling expenses of any member of the board or of any teacher in the employment of the board incurred in attending meetings of the Ontario Educational Association or other like association of teachers or trustees in Ontario;

costs of
legal
proceedings;

- (*e*) if deemed expedient, pay the costs, or any part thereof, incurred by any member, teacher, officer or employee of the board in successfully defending any

legal proceedings brought against him for libel or slander in respect of any statements published at any meeting of the board or of any committee thereof, relating to the employment, suspension or dismissal by the board of any person; R.S.O. 1937, c. 360, s. 25, cls. (d, e).

- (f) invest any proceeds from an insurance claim or any moneys received for any special purposes through legacy, gift or otherwise, and for such purposes shall have and may exercise the powers conferred upon trustees by *The Trustee Act*; investment of funds; Rev. Stat., c. 400.

- (g) contribute, as deemed expedient, towards providing life insurance for employees of the board or any class thereof, and make provision for insuring the board against claims in respect of accidents incurred by pupils while under the jurisdiction or supervision of the board. 1950, c. 23, s. 10.

(2) The board of a high school district which comprises two or more municipalities or parts thereof may pay to each trustee a mileage allowance not exceeding seven cents for each mile necessarily travelled by him in going to the meetings of the board from his home and in returning to his home, and may pay to each trustee a sum not exceeding \$5 for each of not more than twelve meetings attended by such trustee in any one year. 1947, c. 42, s. 6; 1949, c. 38, s. 10. Mileage allowance and fee for meetings.

30.—(1) Subject to section 54, with the approval of the Minister, the board may arrange for the instruction at a high school, collegiate institute, continuation school or vocational school in any other high school district in Ontario, of pupils who desire to take high or vocational school courses which are not provided by the board, and who are the children of rate-payers in the high school district for which the board is appointed, and may pay the fees and transportation expenses of such pupils while attending such courses. R.S.O. 1937, c. 360, s. 26 (1); 1939, c. 44, s. 9; 1945 (2nd Sess.), c. 8, s. 10. Providing for scholars' attendance at other high schools.

(2) The provisions of subsection 1 shall apply in the case of a high school district for which no school has been established by the board. R.S.O. 1937, c. 360, s. 26 (2). Where no school established.

31. Where two or more high schools are under the control of a board, the board may appoint such supervising officials as it deems necessary and, subject to the regulations, shall have power to prescribe the duties of such officials. 1946, c. 37, s. 7. Supervising officials.

Information re
employment.

32.—(1) With the approval of the Minister, the board may appoint one or more officers qualified according to the regulations to collect and distribute information regarding available occupations and employments, and to offer such counsel to the pupils as will enable them to plan intelligently for their educational and vocational advancement.

Agreements
as to
appointment
of officers.

(2) With the approval of the Minister, the board may enter into an agreement with one or more other boards of high school trustees or boards of education for the appointment of one or more such officers, each of whom shall apportion his time in accordance with the terms of the agreement. 1944, c. 56, s. 5.

PROPERTY VESTED IN BOARDS

High school
property
vested in
trustees.

33.—(1) All property heretofore granted or devised to, acquired by or vested in any person or corporation for the high school purposes of any locality, or which may hereafter be so granted, devised, acquired or vested shall be vested in the board having jurisdiction in such locality.

Power to
sell or
convey, etc.

(2) The board shall have full power to sell, convey, transfer or lease such property, or any part thereof, upon the adoption of a resolution by the board that the property is no longer required for high school purposes, and the proceeds of such sale, transfer or lease shall be applied for high school purposes. R.S.O. 1937, c. 360, s. 28.

Power to
sell site.

34. A board, with the approval of the municipal council or of a majority of the municipal councils having jurisdiction within the high school district, and of the Minister, may sell and transfer any site or other property vested in the board, and after making provision for all debts and liabilities of the board may apply the residue of the proceeds to any purpose that may be approved by the Minister, and thereupon the Lieutenant-Governor in Council may by proclamation declare the corporation dissolved. R.S.O. 1937, c. 360, s. 29.

Discontin-
ing high
school.

35. The council of the county in the case of a county high school or the council of the city or town in the case of a high school in a city or separated town may, with the approval of the Minister, discontinue such high school, and the property of the school so discontinued may be disposed of as provided by section 34. R.S.O. 1937, c. 360, s. 30, *amended*.

SCHOLARSHIPS

Establish-
ment of
scholarship.

36. Any person may, with the approval of the board, found a scholarship or prize. R.S.O. 1937, c. 360, s. 31.

37.—(1) A board may annually award five scholarships to the pupils of the public or separate schools situate within the high school district.

Scholarships for public and separate school pupils.

(2) The number of such scholarships shall be fixed by the high school board which may award the same by competitive examinations or otherwise and may prescribe the tenure of such scholarships and provide for the expenses of holding examinations therefor.

Number and mode of awarding.

(3) A scholarship shall be awarded only to a pupil who is a ratepayer or the child of a ratepayer in the municipality contributing to the maintenance of the high school. R.S.O. 1937, c. 360, s. 32.

Who may receive.

38.—(1) A board may annually award free scholarships to the pupils on the results of form or other examinations.

Free scholarships.

(2) The board may make such rules and regulations regarding such scholarships as it may deem expedient. R.S.O. 1937, c. 360, s. 33.

Rules.

PENSIONS AND SICK LEAVE CREDITS

39.—(1) The board, by resolution, may provide, by arrangement either with His Majesty pursuant to the *Goverment Annuities Act* (Canada) or with an insurer licensed under *The Insurance Act*, or with both His Majesty and an insurer as aforesaid, pensions for employees or any class thereof and their wives and children.

Pensions.

R.S.C. 1927, c. 7.

Rev. Stat., c. 183.

(2) In this section, "employee" does not include a teacher or an inspector.

Interpretation.

(3) No resolution passed under this section shall become operative until approved by the Minister, nor shall any such resolution so passed and approved be amended or repealed without the approval of the Minister.

Approval of Minister.

(4) The board shall make such payments or contributions to the scheme as are provided for in the resolution.

Contributions by board.

(5) The board shall deduct from the salary, wages or other remuneration of every employee to whom the scheme is applicable, the amount which the employee is required by the resolution to contribute. 1950, c. 23, s. 11 (1), *part*.

Deduction of contributions.

40.—(1) The board, by resolution, may establish a system of sick leave credit gratuities and payments for the regular attendance of employees or any class thereof.

Sick leave credits.

Approval of
Minister.

(2) No resolution passed under subsection 1 shall become operative until approved by the Minister, nor shall any resolution so passed and approved be amended or repealed without the approval of the Minister. 1950, c. 23, s. 11 (1), *part*.

COUNTY GRANTS, COUNTY PUPILS, ETC.

Cost of
education of
county
pupils.

41.—(1) The cost of education of county pupils attending a high school or a grade A or grade B continuation school shall be provided and paid by the council of the county to the extent, according to the basis, in the manner and at the times set forth in this section and in sections 42 and 43. R.S.O. 1937, c. 360, s. 35 (1).

Amount
payable
by county.

(2) The cost of education of county pupils to be paid by the council of the county may be determined either on the basis of the cost of the preceding calendar year or on the estimated cost for the current calendar year, and may be levied and paid in any year in respect of the cost of the current calendar year or the preceding calendar year. R.S.O. 1937, c. 360, s. 35 (2); 1939, c. 44, s. 11 (1).

When
payable.

(3) Where in any year the amount levied is for the cost for the preceding calendar year, the amounts payable by the council of the county shall become due and be paid not later than the 1st day of July of such year and shall be included in and levied and collected as part of the county rates for that year. R.S.O. 1937, c. 360, s. 35 (3); 1939, c. 44, s. 11 (2).

To be levied
and collected
as part of
county rate.

(4) Where the council of a county provides in its estimates for the cost of education of county pupils for the current calendar year, the amount thereof shall be included in and levied and collected as part of the county rates for that year, and the council of the county may from time to time pay on account of such estimates and shall pay the full amount of the cost for such year when it is finally ascertained as provided in this Act, but not later than the 1st day of July of the succeeding year. R.S.O. 1937, c. 360, s. 35 (4); 1939, c. 44, s. 11 (3).

Final
accounting
and adjust-
ment.

(5) In any case where the council of a county has made payments on account of the cost of education of county pupils according to its estimates or otherwise and it is finally ascertained that the cost is either less or more than the sums of such payments, a final accounting and adjustment of such cost shall be made and the amount of the underpayment, if any, shall forthwith be paid by the council of the county or the amount of the overpayment, if any, shall forthwith be repaid to the council of the county by the board to which such

overpayment was made or, at the option of the council of the county, may be deducted by it from any future payments due to such board in respect to the next succeeding year.

(6) Where the council of a county provides for the cost of education of county pupils according to subsection 4, the board of every high school attended by county pupils from such county shall on or before such day in every year as the council of the county may by by-law prescribe, and not later than the 1st day of March, submit to the council an estimate of the cost of education of such county pupils for the current calendar year in such form and with such detail as to all revenues, expenditures, surpluses and deficits of the board and as to estimated attendance of all pupils and proof of residence of county pupils as the council of the county may by by-law prescribe. R.S.O. 1937, c. 360, s. 35 (5, 6).

42.—(1) Where county pupils are attending a high school or a grade A or grade B continuation school, in a high school district or a continuation school district in which a grade A or a grade B continuation school is established and maintained for any municipality or municipalities or any portion thereof situate in and forming part of the county and not separated therefrom, the cost of education of such county pupils to be paid by the council of the county shall be calculated and ascertained in the following manner:

R.S.O. 1937, c. 360, s. 36 (1), *part*.

- (a) Firstly, the total gross current expenditures for the calendar year for maintenance of the school and for permanent improvements, and for meeting all payments falling due for such year for a sinking fund or principal and interest upon any debentures issued in respect to the school shall be ascertained. 1946, c. 37, s. 8.
- (b) Secondly, the total gross current revenues for the same calendar year from legislative grants, including grants for permanent improvements to vocational schools and vocational school departments, fees other than those raised by taxation, rents, donations other than for permanent improvements, and from all other sources except from taxation shall be ascertained. 1943, c. 26, s. 7 (1); 1947, c. 43, s. 2.
- (c) Thirdly, from the total gross expenditures ascertained as provided in clause *a* there shall be deducted the total gross revenues ascertained as provided in clause *b*, and the resultant amount ascertained after such deduction shall be the net sum upon which the

cost of education of such county pupils shall be based and calculated. 1950, c. 23, s. 12 (1).

- (d) Fourthly, the perfect aggregate attendance of all pupils at the school for the preceding calendar year shall be divided into the net sum ascertained as provided in clause *c* and the resultant amount shall be the net cost per pupil-day of all such pupils.
- (e) Fifthly, the perfect aggregate attendance of all county pupils from the county at the school during the same calendar year shall be multiplied by the amount of the net cost per pupil-day ascertained as provided in clause *d*, and the resultant sum shall be the amount of the net cost of education of such county pupils for which the council of the county shall be liable and pay as provided in section 41. 1945 (2nd Sess.), c. 8, s. 11.

County
pupils
attending
high school
in city or
town.
Rev. Stat.,
c. 66.

(2) Where county pupils and resident pupils as defined by this Act and resident pupils as defined by *The Continuation Schools Act* are attending a high school in a city or town situate in such county but separated therefrom for municipal purposes, or are attending a high school in a municipality in an adjacent county, whether separated therefrom or not, and notice has been given by the board of the high school that the high school is open to such county and resident pupils on the same terms as high schools in municipalities not separated from the county,

- (a) the cost of education to be paid by the council of the county of which they are county pupils shall be calculated in the manner provided in subsection 1 and the cost of education to be paid by the board of the high school district or continuation school district of which they are resident pupils shall be calculated in the manner provided in subsection 1 except that legislative grants shall not be deducted as provided in clause *c* thereof;
- (b) the board may, prior to the 30th day of June in any year, give notice in writing to the clerk of the county in which any county pupils reside and to the secretary of the high school board or continuation school board for the high school district or grade A or grade B continuation school district in which any resident pupils reside that the high school will no longer be open to such county and resident pupils, and upon the giving of such notice such county and resident pupils may continue to attend such high school only until the expiration of two school years

after the 30th day of June in such year. 1939, c. 44, s. 12 (2); 1950, c. 23, s. 12 (2, 3).

(3) Where the board of a high school district contiguous to a city or a separated town gives notice to the city clerk or the town clerk that the high school is open to city or town pupils on the same terms as it is open to resident pupils of the municipality in which the high school is situated, the cost of education to be paid by the council of the city or town shall be calculated and ascertained in the same manner as is provided in subsection 2.

Where high school of district open to pupils of contiguous city or town.

(4) Where the council of a county and the board of a high school attended by county pupils from such county are unable to agree upon the sum to be paid for the cost of education of such county pupils, the matter shall be referred to the judge of the county court for such county, who shall determine such sum.

Where council and board disagree upon cost of education.

(5) Either the council of the county or the board may refer the matter to the judge and he shall give such directions as to the conduct, proceedings and hearing of the reference as he may see fit, and for the purpose of such reference there shall be filed with the judge such financial statements and balance sheets of the affairs of the board and such copies, extracts or information taken from the school register as to enrolment and attendance of all pupils and of the county pupils and as to the names and addresses of such county pupils and of their parents or guardians and such other statements, accounts, records, books and documents as to the judge may appear to be requisite fully and finally to ascertain the revenues and expenditures of the board, the day's attendance of all pupils and county pupils, to calculate and determine the net cost of education of county pupils and to fix the sum to be paid in respect thereto by the council of the county.

Reference to judge.

(6) The costs of any such reference to the judge shall be in his discretion and the amount thereof shall be fixed by him and he may order to and by whom and in what manner the same shall be paid. R.S.O. 1937, c. 360, s. 36 (3-6).

Costs of reference.

43.—(1) The cost of education of county pupils to be paid by the council of a county shall be provided, borne, calculated, and as part of the county rates be levied in the following municipalities and in the following manner:

Cost of education of county pupils, how to be provided.

- (a) Fifty per cent of the said cost by a levy upon and against the whole rateable property in the municipalities or portions of municipalities forming part of the county which are not included in any high school

district or continuation school district in which a grade A or a grade B continuation school is established and maintained, according to the last revised equalized assessment roll of such rateable properties.

- (b) The remaining fifty per cent thereof by a levy upon and against the whole rateable property in the municipalities or portions of municipalities forming part of the county and not included in any high school district or continuation school district in which a grade A or a grade B continuation school is established and maintained, and in which municipalities or portions of municipalities the county pupils or their parents or guardians reside, in the proportion that the perfect aggregate attendance during the preceding calendar year of the county pupils who reside or whose parents or guardians reside in each of such municipalities or portions of municipalities, bears to the perfect aggregate attendance during such year of all county pupils the cost of whose education is to be paid by the council of the county. R.S.O. 1937, c. 360, s. 38 (1); 1945 (2nd Sess.), c. 8, s. 12; 1950, c. 23, s. 13.

Not to be levied in high school district.

- (2) Subject to subsection 3, no part of the cost of education of county pupils to be paid by the council of a county shall be borne by or levied in any municipality or portion of a municipality which is included in a high school district or a continuation school district in which a grade A or grade B continuation school is established and maintained. R.S.O. 1937, c. 360, s. 38 (2); 1939, c. 44, s. 13 (1).

Cost of education of county pupils.

- (3) The council of a county may, during the first or second year or both of the inclusion of any municipality or portion of a municipality located in such county which is included in a high school district or a continuation school district in which a grade A or grade B continuation school is established and maintained, levy a portion of the cost of such education against the whole rateable property in any such municipality or portion of a municipality in the same manner as though such municipality or portion of a municipality were not included in any such high school district or continuation school district; provided the levy made during such year or years is for the purpose of paying that part of the cost of education of county pupils which is owing in respect of the preceding year. 1939, c. 44, s. 13 (2).

Portion of cost to be borne by public school ratepayers.

- 44.** Notwithstanding any of the provisions of section 41, 42 or 43, the ratepayers of a public school section which under agreement with the board of a high school or a grade A

or grade B continuation school is paying a share of the cost of education of pupils resident in such public school section who attend a high school or a grade A or grade B continuation school, shall pay only that part of the county levy for the cost of education of county pupils which is in excess of the levy on the said public school section which is required under the agreement. 1938, c. 35, s. 20.

45. The board of a high school district shall not be entitled to collect from a county the cost of education of any county pupil until the board has furnished to the clerk of the county, Information to be furnished to clerk.

(a) a statement showing the average assessment of rate-payers in the high school district in which the school is situate; and

(b) a statement signed by a parent or guardian showing whether or not such parent or guardian is assessed within the high school district in which the high school is situate and if so assessed the amount of such assessment. 1939, c. 44, s. 14.

46. Where an agricultural department is established by the Minister in a high school, the council of the county in which the high school is situate shall, on or before the 15th day of December in each year, pay to the board of the school in which such department is established, the sum of \$500, chargeable to the general county levy, which shall be applied by the board to the purposes of such department. R.S.O. 1937, c. 360, s. 40; 1939, c. 44, s. 15. County grant to agricultural department.

CONSULTATIVE COMMITTEE

47.—(1) The council of any county may establish a consultative committee, which shall consist of the public school inspector or one of the inspectors where there are more than one for the county, an officer appointed by the Department and three members to be appointed by the council. Consultative committee.

(2) The council may submit to the committee and direct it to report upon petitions for the setting up of new high school districts or the modification or alteration of the boundaries of existing districts, and may direct the committee to obtain information and make recommendations regarding any question affecting the facilities for education in the continuation schools and high schools in the county and the liability of the county for the support of such schools and the cost to the county of the education of pupils in such schools. Functions of committee.

Department
may employ
committee.

(3) The Department may direct the committee to obtain information upon any question affecting applications for the approval of continuation schools or high schools or of sites and buildings for such schools.

Statements
from local
school
boards.

(4) Continuation school boards, high school boards and boards of education having control of schools within the county shall, upon application, furnish to the committee detailed statements of the names, residences and attendance of all resident, non-resident and county pupils and of all receipts and expenditures together with any further information which the committee may require concerning matters which in any way affect the liability of the county or the cost of education of pupils.

Recommen-
dations not
to bind
Department
or council.

(5) The reports of the committee and the recommendations made by it shall be used for the purpose of obtaining information only, and the recommendations of the committee shall not be binding upon the Department, the county council or the boards in control of continuation schools or high schools. R.S.O. 1937, c. 360, s. 41.

DEBENTURES

Debentures
for per-
manent
improve-
ments.

48.—(1) Subject to the approval of the Ontario Municipal Board, the sums required by a board for permanent improvements may be raised on the application of the board by the issue of municipal debentures as provided herein, and all sums required to pay off the debentures and to pay interest thereon and the expenses connected therewith shall be raised by assessment on the ratepayers of the municipality or municipalities or parts thereof comprising the high school district.

Application
by board
to council.

(2) The application shall be made to the council or councils having jurisdiction in the high school district, and in it the board may state the proposed terms of years, not exceeding thirty, within which the sum required is to be repaid.

Council to
deal with
application.

(3) The council or, if more than one, each of the councils applied to, at its first meeting after receiving the application or as soon thereafter as possible, shall consider and approve or disapprove the application, and if a vote in any council results in a tie the application shall be deemed to be disapproved by that council.

Issue of
debentures.

(4) If the council, or a majority of the councils where there are more than one, approve of the application, the council of the municipality within which the high school is or is to be situate shall raise the sum required by the issue of debentures in the manner provided by *The Municipal Act*, or if it so

Rev. Stat.,
c. 243.

desires the council of any municipality may raise its proportion of the sum required by the issue of its own debentures.

(5) If the council, or half or a majority of the councils where there are more than one, disapprove of the application, the council or each of the councils on the request of the board shall submit the application to a vote of the electors of its municipality or of the part thereof included in the high school district in the manner provided by *The Municipal Act* in the case of a money by-law.

Submission of application to ratepayers.
Rev. Stat., c. 243.

(6) If a majority of the votes cast throughout the high school district is in favour of the application, the council of the municipality in which the high school is or is to be situate shall raise the required sum by the issue of debentures in the manner provided by *The Municipal Act* but without submitting the by-law to the electors.

When vote favourable.

(7) The council or councils having jurisdiction in a high school district or a majority of them may pass by-laws for the purpose of raising or borrowing money required by the board for permanent improvements without submitting the by-laws to a vote of the electors.

Assent of electors not required.

(8) A debenture may be for such term of years, not exceeding thirty, as the council or councils concerned or a majority of them deem proper, or the council or councils or a majority of them shall if the board has so requested and may, with or without such request, make the debenture debt payable by annual or other instalments in the manner provided by *The Municipal Act*.

Terms of debentures.

(9) The council or councils of a municipality or municipalities liable for more than one-half of such debt shall be deemed to be a majority for the purposes of subsection 8. 1950, c. 23, s. 14, *part*.

Interpretation.

APPORTIONMENT AND COLLECTION OF RATES

49. The council or councils of the municipality or municipalities included in a high school district shall levy and collect each year and transfer to the board from time to time as required, but not later than the 15th day of December, such amount as the board may deem necessary for,

Rates for current purposes.

- (a) maintenance of the school or schools under the jurisdiction of the board;
- (b) payment of fees for which the board is liable in respect of resident pupils attending other schools; and

(c) capital expenditure out of current revenue not exceeding \$5,000 or for such greater sum as may be authorized by the Ontario Municipal Board, and such amount shall be apportioned and raised in the manner provided in section 50 with respect to liability for debenture debt. 1950, c. 23, s. 14, *part*.

Proportionate liability for debenture debt.

50.—(1) Where a high school district comprises more than one municipality or parts thereof and the municipalities or parts form part of a county for municipal purposes, each municipality shall be liable for such proportion of the principal and interest payable under the debentures and of the expenses connected therewith as the equalized assessment of the municipality or part bears to the equalized assessment of the whole district, and the council of each municipality shall levy on the property rateable for school purposes in the municipality or part and pay its proportion to the municipality that has issued the debentures.

Idem.

(2) Where a high school district comprises a city or separated town and one or more other municipalities or parts thereof that form part of a county for municipal purposes, each municipality shall be liable for such proportion of the principal and interest payable under the debentures and of the expenses connected therewith as the assessment of the city or separated town or the equalized assessment of the municipality or part, as the case may be, bears to the total of the assessment of the city or separated town and of the equalized assessments of the other municipalities or parts, and the council of each municipality shall levy on the property rateable for school purposes in the municipality or part and pay its proportion to the municipality that has issued the debentures.

Idem.

(3) Where a high school district comprises two or more adjoining municipalities or parts thereof in a territorial district, each municipality shall be liable for such proportion of the principal and interest payable under the debentures and of the expenses connected therewith as the assessment of the municipality or part bears to the total assessment of the whole district, and the council of each municipality shall levy on the property liable for school purposes in the municipality or part and pay its proportion to the municipality that has issued the debentures.

Assumption of larger proportion.

(4) Any municipality may offer to assume and may assume a greater proportion than its proportion under subsection 1, 2 or 3, and in that case the proportion of the balance to be paid by each of the other municipalities shall be such as may be agreed upon and if the councils of the other municipalities fail to agree upon the proportion within thirty days of the making

of the offer, the proportion of the balance to be paid by each of the other municipalities shall be determined in accordance with subsection 1, 2 or 3, as the case may be.

(5) Where the council of one of the municipalities is of opinion that the division of liability in accordance with subsections 1 to 4 imposes an undue burden on the ratepayers of the municipality or part, the council may apply to the board of the high school district for an arbitration. Request for arbitration.

(6) Upon receipt of the application, the board shall direct its secretary to call a meeting of the assessors of the municipalities within or partly within the district, and the county assessors, if any, of the county or counties within which the municipalities forming part of a county for municipal purposes are situate, and these assessors shall be arbitrators to determine the proportion of liability each municipality shall bear. Arbitrators.

(7) The arbitrators shall make their decision in writing and file a copy thereof with the secretary of the board who shall forthwith send a copy of the decision to the clerk of each municipality by registered post. Notification of decision.

(8) The costs of the arbitration shall be in the discretion of the arbitrators and the direction of the arbitrators with respect thereto shall be included in their decision. Costs.

(9) If, within thirty days of the mailing of the copies of the decision by the secretary, the council of one of the municipalities files with the secretary a written objection to the decision of the arbitrators, the board shall refer the matter to the Ontario Municipal Board whose decision shall be final. Reference to Municipal Board where decision objected to.

(10) The decision of the arbitrators, or, if the matter is referred to the Ontario Municipal Board, the decision of the Ontario Municipal Board shall be effective for a period of five years or until the boundaries of the high school district are changed or until the assessment of one of the municipalities is increased by more than ten per cent in any two consecutive years. Effect of decision.

(11) Where the matter is referred to the Ontario Municipal Board the costs of the arbitration and of the reference shall be in the discretion of that Board. Costs.

(12) Nothing in section 48 or in this section shall prevent the municipality in which the high school is situate from assuming the full cost of permanent improvements or any part thereof or from undertaking to pay any debentures that may be issued therefor notwithstanding that such municipality forms only a part of the high school district. 1950, c. 23, s. 14, *part.* Municipality may assume full cost of permanent improvements.

GRANTS, FEES, ATTENDANCE

Council may raise further sum for high school purposes.

51.—(1) The council of any municipality or county may raise by assessment, in addition to any sum which it is required to raise by this Act, such further sums as it may deem expedient for the maintenance or permanent improvement of a high school, provided that, in the case of a county, any additional sum so raised shall be by a general county levy and shall be apportioned, except as provided in subsection 2, among all the high schools of the county in proportion to the liability of the county to each board. R.S.O. 1937, c. 360, s. 44 (1); 1938, c. 35, s. 23 (1).

County council grants to particular schools.

(2) The council of a county may by a two-thirds vote of all the members thereof pass by-laws for granting additional aid to any one or more of the high schools in the county without making a similar provision for the other high schools therein. R.S.O. 1937, c. 360, s. 44 (2).

Payment of grants for permanent improvements.

52.—(1) All money which a municipal council is required by this Act to collect for permanent improvements shall be paid to the treasurer of the board on or before the 31st day of December of the year in which application was made by the board for such money.

For maintenance.

(2) All money which a council is required to collect by assessment, or to raise by the way of loan or otherwise, for the maintenance of a high school shall be paid from time to time to the treasurer of the board as the board may require. R.S.O. 1937, c. 360, s. 45.

Apportionment of high school grant in united counties.

53. The council of united counties may apportion the amount to be levied for high school purposes so that each county shall be liable only for the maintenance of the high schools within such county, but in such case, each of the counties shall pay for the maintenance of pupils residing therein who attend any high school situate in any other of the counties. R.S.O. 1937, c. 360, s. 46.

When schools to be free.

54.—(1) No fees shall be payable by or in respect of a pupil attending a high school who is,

- (a) a resident pupil of the high school district by the board of which the school is established or maintained;
- (b) a pupil whose cost of education is payable under sections 41, 42 and 43. 1938, c. 35, s. 24 (1), *part*; 1949, c. 38, s. 15 (1).

(2) Where a resident pupil of a high school district attends a high or continuation school under clause *b* of subsection 2 of section 55 or under subsection 3 of section 55, the board of the high school district of which he is a resident pupil shall pay fees to the board of the high or continuation school district whose school he attends, calculated in accordance with section 42, except that legislative grants shall not be deducted as provided in clause *c* of subsection 1 thereof. 1949, c. 38, s. 15 (2). Fees payable by boards in certain cases.

(3) Pupils other than county pupils and the pupils referred to in subsections 1 and 2 attending a high school shall pay such fees as the board may prescribe, but such fees shall not be greater than the average cost per pupil for education in the high school for the preceding calendar year. R.S.O. 1937, c. 360, s. 47 (2); 1938, c. 35, s. 24 (2); 1949, c. 38, s. 15 (3). When fees may be charged.

(4) The fees payable under this section shall be payable to the treasurer of the board. R.S.O. 1937, c. 360, s. 47 (3). Fees payable to treasurer.

(5) The council of a county or of any municipality within the county may enter into an agreement with the board of education or high school board of any city or separated town in the county, or with the board of a high school district in an adjacent county, for the payment of the whole or any part of any fees which may be payable in respect of pupils from such county or municipality within the county attending a high school under the control of such board of education or high school board. R.S.O. 1937, c. 360, s. 47 (5); 1938, c. 35, s. 24 (4). Agreements for payment of fees of non-resident pupils.

(6) Where the county council enters into an agreement under subsection 5, the amount of such fees shall be levied in the manner set forth in subsection 1 of section 43, provided that no part of such fees shall be borne by or levied in any municipality or portion of a municipality which is included in a high school district or a continuation school district in which a grade A or a grade B continuation school is established and maintained. R.S.O. 1937, c. 360, s. 47 (6). How fees to be levied.

55.—(1) A county pupil shall have the right to attend any high or continuation school in the county of which he is a county pupil. 1949, c. 38, s. 16, *part*. Right to attend schools, county pupils;

(2) A resident pupil of a high school district in a county shall have the right to attend, resident pupils in counties;

(a) a high school in the district of which he is a resident pupil; or

- (b) any high or continuation school,
 - (i) which is more accessible to the pupil than any high school in his own district, or
 - (ii) to take a course of study leading to a type of secondary school graduation diploma not available in his own district, or
 - (iii) to take a grade XIII subject or subjects not available in his own district and required by the pupil for admission to any university or teacher-training course or for the practice of any trade, profession or calling,

provided that the school is situated in his own county outside of a city or separated town, or is situated in an adjoining county or in a city or separated town in his own or an adjoining county and has been declared open to such pupils. 1949, c. 38, s. 16, *part*; 1950, c. 23, s. 16 (1).

resident
pupils in
territorial
districts;

(3) A resident pupil of a high school district in a territorial district shall have the right to attend any high or continuation school in Ontario,

- (a) which is more accessible to the pupil than any high school in his own school district; or
- (b) to take a course of study leading to a type of secondary school graduation diploma not available in his own school district; or
- (c) to take a grade XIII subject or subjects not available in his own school district and required by the pupil for admission to any university or teacher-training course or for the practice of any trade, profession or calling. 1950, c. 23, s. 16 (2).

non-resident
pupils.

(4) A non-resident pupil may attend any high school at the discretion of the board. 1949, c. 38, s. 16, *part*.

When
interval
between
attendance
at public
and high
schools.

56. Notwithstanding sections 54 and 55, no pupil who, having completed the fourth form course in a public or separate school, has attended any other school or schools for six years shall after the expiration of such six years be entitled to attend a high school except upon payment of such fees as may be prescribed by the board, but such fees shall not be greater than the average cost per pupil for education in such high school. R.S.O. 1937, c. 360, s. 49.

HIGH SCHOOL ADMISSION

57.—(1) Where a pupil has been promoted from grade VIII to grade IX in the manner prescribed by the regulations ^{Admission to grade IX.} he shall be admitted to grade IX.

(2) An applicant who has not been promoted from grade VIII to grade IX in the manner prescribed by the regulations ^{Idem.} shall be admitted to grade IX after the principal has satisfied himself that the applicant is competent to undertake the work of that grade.

(3) An applicant for admission to grade X, XI, XII or XIII shall be admitted after the principal has satisfied himself that ^{Admission to grades X-XIII.} the applicant is competent to undertake the work of the grade to which he has applied for admission.

(4) Where the principal is not satisfied that an applicant is competent to undertake the work of the grade to which the applicant has applied for admission under subsection 3, he ^{Reduction in grade.} may place him in a lower grade.

(5) An applicant shall be entitled to enter a high school which is conducted at night if, in the opinion of the principal of the high school, after due examination or other investigation, he is competent to take up the subjects as prescribed by the Minister, but such admission shall not entitle him to admission to the high school when conducted by day. 1950, c. 23, s. 17. ^{Admission to night high schools.}

HIGH SCHOOL TEACHERS

58.—(1) No person shall be appointed principal or assistant teacher in a high school who does not possess the qualifications prescribed by the regulations. ^{Qualification.}

(2) Every teacher of a high school shall in the organization, discipline, management and classification of the pupils be ^{Regulations to apply.} subject to the regulations.

(3) The provisions of *The Public Schools Act* respecting superannuation shall apply to teachers of high schools. R.S.O. ^{Superannuation. Rev. Stat.. c. 316.} 1937, c. 360, s. 55.

AGREEMENTS

59.—(1) A memorandum of every contract of employment between a board and a teacher shall be made in writing in the form of contract prescribed by the regulations, signed by the parties, sealed with the seal of the board and executed before the teacher enters upon his duties, but if for any reason such memorandum is not so made every contract shall be deemed ^{Memorandum of contract.}

to include the terms and conditions contained in the prescribed form of contract.

Salary of teacher.

(2) Unless otherwise expressly agreed, a teacher shall be entitled to be paid his salary in the proportion which the total number of days during which he teaches bears to the whole number of teaching days in the year. 1949, c. 38, s. 17.

Sickness or dental treatment.

(3) A teacher shall be entitled to his salary notwithstanding his absence from duty on account of sickness for a period not exceeding four weeks in any one year of his employment if the sickness is certified to by a physician, or in a case of acute inflammatory condition of the teeth or gums by a licentiate of dental surgery; but the period of four weeks may in any case of sickness be allowed and extended at the pleasure of the board without a certificate.

Absence of teacher in quarantine.

(4) Every teacher shall be entitled to his salary notwithstanding his absence from duty in any case where, because of exposure to a communicable disease, he is quarantined or otherwise prevented by the order of the medical health authorities from attending upon his duties. R.S.O. 1937, c. 360, s. 56 (2, 3).

Appearing as witness in court.

(5) Every teacher shall be entitled to his salary notwithstanding his absence from duty as a witness in any court to which he has been summoned in any proceedings to which he is not a party or one of the persons charged. 1943, c. 26, s. 9.

Suspension for neglect of duty.

(6) A high school inspector may, on the complaint of a board, suspend the certificate of a teacher who wilfully neglects or refuses to carry out his agreement with the board, but the teacher may appeal to the Minister who may make such order with regard to the suspension as he may deem proper.

Disputes between teachers and trustees.

(7) All matters of difference between boards and teachers in regard to salary or other remuneration, whatever may be the amount in dispute, shall be determined in the division court of the division in which the cause of action arose, subject to the same right of appeal as under *The Public Schools Act*.

Rev. Stat., c. 316.

Award of salary by way of penalty.

(8) If it appears to the judge on the trial of an action for the recovery of a teacher's salary that there was not reasonable ground for the board disputing its liability or that the failure of the board to pay was from an improper motive, he may award as a penalty a sum not exceeding three months' salary.

(9) For the purposes of subsection 8 the failure of a board to pay a teacher's salary may be extended by a judge to include failure to pay a teacher's salary when an agreement for his employment has been made by the board but no written agreement has been entered into and executed as required by subsection 1, if the judge is satisfied upon the evidence that the refusal of the board to pay the salary by reason of the absence of an agreement in writing is without merit. R.S.O. 1937, c. 360, s. 56 (4-7). Failure of board to pay salary when no written agreement.

RETIRING ALLOWANCES

60. Where a teacher, officer or other employee of the board whose time is entirely devoted to the work of the board retires, having reached the age of sixty years, or after having been for twenty years in the service of the board, the board may grant him an annual allowance not exceeding the salary which he was receiving at the time of his retirement, or may make a grant to him by way of gratuity of such sum as will represent not more than the present value of such allowance for his life computed on the basis of interest at the rate of four per cent per annum. R.S.O. 1937, c. 360, s. 58. Retiring allowance.

SCHOOL YEAR AND HOLIDAYS

61.—(1) The school year shall consist of two terms, the first of which shall begin on the first Tuesday of September following Labour Day and shall end on the 22nd day of December and the second of which shall begin on the 3rd day of January and end on the 29th day of June. R.S.O. 1937, c. 360, s. 59 (1); 1938, c. 35, s. 26 (1). Terms.

(2) When the 3rd day of January is a Friday the schools shall not be opened until the following Monday; when the 29th day of June or the 22nd day of December is a Monday the schools shall be closed on the preceding Friday. R.S.O. 1937, c. 360, s. 59 (2); 1938, c. 35, s. 26 (2). Where opening and closing days Friday or Monday.

(3) Every Saturday, every public holiday, the 24th day of May, the 11th day of November, the day appointed annually to be celebrated officially as the birthday of the reigning sovereign, the week following Easter Day, and every day proclaimed a holiday by the authorities of the municipality in which the teacher is engaged and every day upon which a school is closed under the provisions of *The Public Health Act* or the regulations of the Department, shall be a school holiday. 1944, c. 56, s. 6. Holidays. Rev. Stat., c. 306.

AUTHORIZED BOOKS

Text-books.

62.—(1) A teacher shall not use or permit to be used as a text-book in a high school any book which is not authorized by the regulations or prescribed by the Minister, and the Minister, upon the report of the inspector, may withhold the whole or any part of the legislative grant in respect of any high school in which any unauthorized or unprescribed book is so used.

Change of text-books.

(2) Subject to the written approval of the board, any authorized or prescribed text-book which is in actual use in a high school may be changed by the teacher for any other authorized or prescribed text-book on the same subject. 1945 (2nd Sess.), c. 8, s. 16.

OFFENCES AND PENALTIES

Conflict of interest.

63. A high school trustee shall not enter into any contract, agreement, engagement or promise of any kind, either in his own name or in the name of another, and either alone or jointly with another, in which he has any pecuniary interest, profit, or promised or expected benefit with the board of which he is a member, or have any pecuniary claim upon or receive compensation from the board for any work, engagement, employment or duty on behalf of the board, and every such contract, agreement, engagement or promise shall be null and void, and a trustee violating the provisions of this section shall *ipso facto* vacate his seat, and the secretary shall forthwith notify the clerk of the municipality or the appointing body of the vacancy. R.S.O. 1937, c. 360, s. 61.

Idem.

64. A trustee who is a shareholder, officer, director or other employee of a company shall not vote on any question affecting the company in respect to any dealings or contract between it and the board of which he is a member. R.S.O. 1937, c. 360, s. 62.

Newspaper proprietors.

65. No person shall be disqualified from being a member of a board or from sitting and voting on such board by reason only of his being proprietor of or otherwise interested in a newspaper or other periodical publication in which an advertisement is inserted by the board in the regular course of business, or which is subscribed for by the board, if such advertisement or subscription is paid for at the usual rate, but such member shall not be entitled to vote where his own account is in question. R.S.O. 1937, c. 360, s. 63.

Seat vacated by conviction for crime, etc.

66. If a trustee is convicted of an indictable offence, or becomes mentally ill, or, without being authorized by resolution entered upon the minutes, absents himself from the

meetings of the board for three consecutive months, or ceases to be a resident within the county, municipality or district for which he was appointed, he shall *ipso facto* vacate his seat, and the secretary shall forthwith notify the clerk of the council of the county or municipality or other appointing body of the vacancy; provided that where a trustee is convicted of an indictable offence such vacancy shall not be filled until the time for taking any appeal which may be taken from such conviction has elapsed, or until the final determination of any appeal so taken, and in the event of the quashing of the conviction such seat shall be deemed not to have been vacated. R.S.O. 1937, c. 360, s. 64; 1938, c. 35, s. 27.

67. Any person who wilfully interrupts or disquiets any high school by rude or indecent behaviour, or by making a noise either within the place where such school is kept or held or so near thereto as to interfere with the order or exercises of the school, shall be guilty of an offence and liable for each offence to a penalty of not more than \$20. R.S.O. 1937, c. 360, s. 65. Disturbing schools.

68. Where a teacher negligently or wilfully permits a book which is not authorized by the regulations or prescribed by the Minister to be used as a text-book by the pupils of his school, the Minister, on the report of the inspector, may suspend the teacher and the board may also deduct from his salary a sum equal to so much of the legislative grant as has been withheld on account of such use or any less sum at its discretion. 1945 (2nd Sess.), c. 8, s. 17. Substitution of unauthorized text-books.

69.—(1) A trustee who sits or votes at any meeting of the board while disqualified under this Act shall be guilty of an offence and liable to a penalty of \$20 for every meeting at which he so sits or votes. Disqualified persons acting as trustees.

(2) Every person appointed as trustee who has not refused to accept the office and who at any time refuses or neglects to perform its duties shall be guilty of an offence and liable to a penalty of not more than \$20. R.S.O. 1937, c. 360, s. 67. Penalty for refusal to perform duties.

70.—(1) A high school trustee shall not be eligible for appointment as a teacher by the board of which he is a member or by any public, separate or continuation school board having jurisdiction in the whole or any part of the area in which the board of which he is a member has jurisdiction. Disqualification of trustees as teachers.

(2) A high school teacher shall not be eligible to be a member of the high school board with which he has a teacher's contract, nor to be a member of any public, separate or continuation Disqualification of teachers as trustees.

school board having jurisdiction in the whole or any part of the area in which the board with which he has a teacher's contract has jurisdiction. 1950, c. 23, s. 20.

Liability for neglect to take security.

71. If a board refuses or neglects to take proper security from the treasurer or other person to whom they entrust school money and any school money is forfeited or lost to the board in consequence of the refusal or neglect every member of the board shall be personally liable for such money, and the same may be recovered by the board or any ratepayer or ratepayers interested therein suing on behalf of himself or themselves and all ratepayers of the high school district interested in any court of competent jurisdiction, but no member shall be liable if he proves that he made reasonable efforts to procure the taking of the security. R.S.O. 1937, c. 360, s. 69.

Trustee may not be secretary, treasurer, or bondsman.

72. A trustee shall not be appointed secretary, treasurer, or secretary-treasurer of the board or be bondsman or surety for the treasurer or secretary-treasurer or for any person entrusted with school money. R.S.O. 1937, c. 360, s. 70.

Duty to deliver up books or money.

73.—(1) A treasurer, secretary or secretary-treasurer, or a person having been a treasurer, secretary or secretary-treasurer, and a trustee or other person who has in his possession any book, paper, chattel or money which came into his possession as such treasurer, secretary, secretary-treasurer, trustee or otherwise shall not wrongfully withhold, or neglect or refuse to deliver up, or account for and pay over the same to the person and in the manner directed by the board or by other competent authority.

Summons for appearance.

(2) Upon application to the judge by the board, supported by affidavit, showing such wrongful withholding or refusal, the judge may summon the treasurer, secretary, secretary-treasurer, trustee or person to appear before him at a time and place appointed by him.

Service of summons.

(3) A bailiff of a division court, upon being required so to do by the judge, shall serve the summons or a true copy thereof on the person complained against personally or by leaving it with a grown-up person at his residence.

Order to account.

(4) At the time and place so appointed, the judge, if satisfied that service has been made, shall, in a summary manner, and whether the person complained against does or does not appear, hear the complaint, and if he is of opinion that it is well founded may order the person complained against to deliver up, account for and pay over such book, paper, chattel or money by a day to be named by the judge in the

order, together with such reasonable costs incurred in making the application as the judge may allow.

(5) In the event of non-compliance with the order, the judge may order such person to be forthwith arrested by the sheriff of any county or district in which he may be found, and to be committed to the common jail of the county or district in which he resides, there to remain without bail until the judge is satisfied that he has delivered up, accounted for or paid over the book, paper, chattel or money in the manner directed by the board or other competent authority.

Effect of non-compliance with judge's order.

(6) Upon proof of his having so done, the judge shall make an order for his discharge and he shall be discharged accordingly.

Discharge on complying with order.

(7) Upon proof that the person has done all in his power to deliver up, account for or pay over such book, paper, chattel or money as directed the judge may order his discharge on such terms or conditions as he may deem just.

Discharge on terms.

(8) Such proceedings shall not impair or affect any other remedy which the board or other competent authority may have against the person complained against or against any other person. R.S.O. 1937, c. 360, s. 71.

Other remedy not affected.

74. It shall be the duty of a board and of the treasurer, secretary or secretary-treasurer to furnish the auditors with any papers and information in their power which may be required of them relative to the school accounts, and any member of the board and a treasurer, secretary or secretary-treasurer who neglects or refuses so to do shall be guilty of an offence and liable to a penalty of not more than \$20. R.S.O. 1937, c. 360, s. 72.

Penalties on trustees refusing information, etc., to auditor.

75. If a trustee knowingly signs a false report, or if a teacher keeps a false school register or makes a false return, he shall be guilty of an offence and for every offence shall be liable to a penalty of not more than \$20. R.S.O. 1937, c. 360, s. 73.

Penalty for false school reports and registers.

76.—(1) No person other than a ratepayer, trustee or high school teacher may take proceedings to recover any penalty imposed by this Act.

Who may prosecute.

(2) Every penalty imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act*, and unless otherwise provided shall be payable to the treasurer of the board of the high school district in which the

Payment and application of penalties.
Rev. Stat., c. 379.

offence was committed and shall be applied to high school purposes, except when the penalty is imposed upon a treasurer, secretary or secretary-treasurer, in which case the same shall be payable to the chairman of the board and shall be applied to high school purposes. R.S.O. 1937, c. 360, s. 74.

[NOTE.—*For liability of a trustee, teacher, inspector or officer of the Department of Education who is concerned or interested in the sale of books or supplies, and any one employing or paying him to act as agent or otherwise, see The Department of Education Act, Rev. Stat., c. 94.*]

CHAPTER 166

The Highway Improvement Act

PART I

INTERPRETATION

1. In this Act,

Interpreta-
tion.

- (a) "approved" means approved by the Minister or of a type approved by the Minister;
- (b) "bridge" means a public bridge, and includes a bridge forming part of a highway or on, over, under or across which a highway passes;
- (c) "Department" means Department of Highways;
- (d) "Deputy Minister" means Deputy Minister of Highways;
- (e) "Fund" means Highway Improvement Fund;
- (f) "highway" and "road" mean a common or public highway and include a street, bridge, and any other structure incidental thereto;
- (g) "Minister" means Minister of Highways;
- (h) "road authority" means the Department, a municipal corporation, board, commission or other body having control of the construction, improvement, alteration, maintenance and repair of a highway and responsible therefor;
- (i) "roadway" means that part of the highway designed or intended for use by vehicular traffic. R.S.O. 1937, c. 56, s. 1; 1944, c. 23, s. 1; 1947, c. 44, s. 1; 1950, c. 24, s. 1.

ADMINISTRATION

2. The Department shall be continued and shall be presided over by the Minister. R.S.O. 1937, c. 56, s. 2. Department continued.

3. The Lieutenant-Governor in Council may from time to time appoint a Deputy Minister of Highways who shall Deputy Minister.

perform such duties in the Department as may be assigned to him by the Lieutenant-Governor in Council or by the Minister. R.S.O. 1937, c. 56, s. 3.

Oath of
Deputy
Minister.

4. The Deputy Minister shall, before entering upon the duties of his office, take an oath faithfully to discharge the same, which oath shall be administered by the Minister or by any person appointed by the Lieutenant-Governor in Council for that purpose. R.S.O. 1937, c. 56, s. 4.

Secretary
and staff.

5. The Lieutenant-Governor in Council may appoint a secretary of the Department and such engineers, surveyors and other officers, clerks and servants of the Department as may be deemed necessary and may prescribe their duties and fix their salaries or other remuneration which shall be payable out of any moneys appropriated by the Legislature for that purpose. R.S.O. 1937, c. 56, s. 5.

Agreements
as to appli-
cation of
provincial
subsidies.

6. The Lieutenant-Governor in Council may enter into an agreement with the Governor in Council, or with any member of His Majesty's Privy Council for Canada acting for and on behalf of the Governor in Council, for the application to the cost of any work under this Act, of such subsidy or subsidies, or any part of such subsidy or subsidies as may be appropriated for highway improvement by the Parliament of Canada, and the Minister may vary the proportionate amounts to be paid by Ontario and by municipalities under this Act, by reason of such subsidy or subsidies, and may vary the conditions under which payment shall be made for construction, repair or maintenance, in consequence of such agreement. R.S.O. 1937, c. 56, s. 6.

HIGHWAY IMPROVEMENT FUND

Fund and
special
account.

7. There shall be a fund known as the "Highway Improvement Fund" and there shall be kept on the books of the Treasurer of Ontario an account known as the "Highway Improvement Fund Account". R.S.O. 1937, c. 56, s. 7.

How
made up.

8.—(1) In addition to all sums of money heretofore set apart and appropriated by the Legislature for the improvement of public highways there shall be placed to the credit of the Fund in the account,

(a) a sum in every fiscal year equal to the gross receipts of the Province from motor vehicle permits and licences and all other sources of revenue under *The Highway Traffic Act*;

Rev. Stat.,
c. 167.

(b) a sum equal to all repayments to the Province on

account of amounts chargeable to or received from municipalities, individuals, companies or corporations by reason of any work performed or expenditures incurred or materials or property sold or fees or fines imposed under any of the provisions of this Act and the regulations made thereunder;

- (c) a sum equal to any subsidy or payments received from the Government of Canada under *The Canada Highways Act*; 1919 (1),
c. 54
(Can.).
- (d) a sum equal to any revenue collected by the Province under *The Gasoline Tax Act* and the regulations made thereunder; Rev. Stat.,
c. 157.
- (e) a sum equal to all revenues collected under the Acts administered by the Department or under the regulations passed under such Acts. R.S.O. 1937, c. 56, s. 8 (1).

(2) The sums mentioned in the clauses of subsection 1 shall be credited to the Fund annually as of the 1st day of April in each year and shall be computed upon the gross receipts from the sources designated in such clauses in the next preceding fiscal year. R.S.O. 1937, c. 56, s. 8 (2); 1939, c. 19, s. 1. How credits
to be made.

(3) Whenever directed so to do by the Lieutenant-Governor in Council the Treasurer of Ontario shall place to the credit of the Fund such additional amounts as may be required from time to time to meet the payments which may be authorized to be made out of the Fund, but such amounts shall not at any time exceed in the whole the sum which might be repaid with interest and sinking fund charges by an annual payment for twenty years of the sum of \$2,000,000. R.S.O. 1937, c. 56, s. 8 (3). When
additional
sums
required.

(4) All payments which shall be made under this Act, *The Highway Traffic Act*, *The Gasoline Tax Act* and any other Acts administered by the Minister, except those for which an annual appropriation is made by the Legislature, shall be payable out of the Consolidated Revenue Fund and shall be chargeable to the Fund and be debited to the Highway Improvement Fund Account. 1947, c. 44, s. 2. Payments
out of
Fund.
Rev. Stat.,
cc. 167, 157.

9. There shall be laid before the Assembly by the Treasurer of Ontario at the commencement of each session, a statement showing all sums credited to the Fund and all payments chargeable thereto during the fiscal year next preceding and the balance at the credit of the Fund at the close of such fiscal year. R.S.O. 1937, c. 56, s. 9. Annual
statement to
Assembly.

SPECIAL INSTRUCTION

Special instruction in respect to highways.

10. The Minister may arrange for special instruction or publicity in respect to highway improvement, and the cost of such service, including travelling and other expenses incidental thereto, or such part thereof as the Minister may approve, shall be payable out of any funds appropriated by the Legislature for the special instruction of superintendents, overseers and patrolmen. R.S.O. 1937, c. 56, s. 11.

PART II

COUNTY ROAD SYSTEMS

Establishment of county road systems.

11.—(1) Subject to the approval of the Lieutenant-Governor in Council as hereinafter provided, the council of a county may by by-law adopt a plan of county road improvement and establish a county road system throughout the county by assuming roads in any municipality in the county and may include in the system such boundary line roads or portions thereof between the county and any other county, or between the county and a city or separated town, as may be agreed upon by the municipalities interested and the by-law shall designate the roads to be assumed or improved or intended to form or be added to the county road system. R.S.O. 1937, c. 56, s. 12 (1); 1944, c. 23, s. 2 (1).

General rate.

(2) The by-law shall provide for the levying of a general annual rate upon all the municipalities in the county not separated therefrom for municipal purposes unless the Minister is of opinion that on account of the remoteness of any municipality from the roads included in the county road system it is inequitable that the rate should be levied in such municipality, in which case the by-law shall exempt such municipality accordingly, but the representative or representatives in the county council of any municipality so exempt shall not vote upon any by-law passed under this Part, and for the purposes of section 12 the equalized assessment of any municipality so exempt shall not be included in ascertaining the total equalized assessment of the county.

Application of proceeds of rate.

(3) All moneys raised under the by-law shall be applied in the construction, improvement, maintenance and superintendence of roads included in the county road system and to any expenditure properly chargeable to county road systems under this Act. R.S.O. 1937, c. 56, s. 12 (2, 3).

County road committee.

(4) Where a county road system is established under this Act the council shall appoint by by-law three or five persons who are residents of the county but who need not be

members of the council, who shall constitute a committee for the purpose of directing the work to be done on the county road system.

(5) Where the committee consists of three members, one member shall be appointed and hold office for a term of three years, one member shall be appointed and hold office for a term of two years, and one member shall be appointed and hold office for a term of one year, and thereafter each member shall be appointed and shall hold office for a term of three years, and where the committee consists of five members, one member shall be appointed and hold office for a term of five years, one member shall be appointed and hold office for a term of four years, one member shall be appointed and hold office for a term of three years, one member shall be appointed and hold office for a term of two years and one member shall be appointed and hold office for a term of one year, and thereafter each member shall be appointed and shall hold office for a term of five years.

(6) A member of the committee shall be eligible for re-appointment upon the expiry of his term of office.

(7) A member of the committee may be removed by a vote of two-thirds of the members of the council present and voting thereon at any regular meeting of the council.

(8) Where a member of the committee is so removed or dies or resigns his office, the council may appoint some other person to fill the vacancy for the remainder of the term for which the person so removed, dying or resigning was appointed.

(9) The warden of the county for the time being shall be *ex officio* a member of the committee and may sit and vote thereon. R.S.O. 1937, c. 56, s. 12 (4); 1945, c. 9, s. 1 (1).

(10) Where a county road system is established in a county in which a suburban roads commission has been appointed in the manner provided by subsection 3 of section 40, the council of the county may by by-law provide that the members of the suburban roads commission, from time to time, shall constitute the committee for the purpose of directing the work to be done on the county road system and in such case subsections 4 to 9 shall not apply. 1945, c. 9, s. 1 (2).

(11) The administration and management of the county road system shall be vested in an officer appointed by by-law of the county and known as the county road superintendent, who shall be an engineer approved by the Minister, and the

county road superintendent shall act under the direction of the county road committee.

Qualifica-
tions.

Rev. Stat.,
c. 292.

(12) Every county road superintendent hereafter appointed shall be a professional engineer registered as a civil engineer under *The Professional Engineers Act*.

Salary to
be fixed by
county
council.

(13) Where a vacancy occurs in the position of county road superintendent the county council shall advertise for applicants stating the salary and allowances which shall be paid and such salary and allowances shall be set by the county council and approved by the Minister.

Copy of
by-law to be
sent to De-
partment.

(14) A copy of the by-law appointing the county road superintendent shall be transmitted to the Department within thirty days of the passing thereof and such appointment shall be subject to the approval of the Minister, and when so approved shall not be repealed or amended without the consent in writing of the Minister.

Members of
councils
not to be
appointed.

(15) No member of the council of the county and no member of the council of any local municipality in the county shall be appointed as county road superintendent, or be employed by the county road superintendent in any capacity, and any such member who is appointed, or who acts or is employed in contravention of this section shall forfeit his seat and be disqualified from sitting or voting in the council of which he was a member at the time of his appointment or employment. 1944, c. 23, s. 2 (2).

Payment,
how to be
made.

(16) The disbursement of all moneys for works on or pertaining to the county road system shall be made by the county treasurer only on the certificate of the county road superintendent approved by the county road committee as certified under the hand of the chairman thereof. R.S.O. 1937, c. 56, s. 12 (6).

Amendment
of by-laws.

(17) Where a by-law has been passed for the purpose of establishing a county road system, the council of the county with the approval of the Lieutenant-Governor in Council may amend the by-law by adding roads to or removing roads from the county road system, or in any other manner.

Roads re-
moved from
system.

(18) Where a road is removed from a county road system pursuant to subsection 17, the road shall thereupon revert or be transferred to the corporation of the local municipality in which it is situate. 1948, c. 38, s. 1.

When assent
of electors
not
required.

12.—(1) Where a by-law passed under section 11 has received the assent of two-thirds of the members of the council of the county present and voting thereon, representing at

least one-half of the total equalized assessment of the county, it shall not be necessary to submit the same to the electors of the county, but if before the final passing of the by-law the same has been submitted to and has received the assent of the electors of the county qualified to vote on money by-laws such by-law may be finally passed by a majority of the members of the council present and voting thereon, and a by-law so submitted to the electors may after such submission or after the final passing thereof be amended by the council in order to comply with any direction or requirement of the Minister, and it shall not be necessary to submit any such amending by-law to the electors.

(2) Where two or more members of the council represent one local municipality and do not vote in the same manner for or against the by-law the equalized assessment of such municipality shall be proportionately divided in ascertaining the amount of the equalized assessment represented by members of the county council assenting to such by-law. Where representatives of local municipality differ.
R.S.O. 1937, c. 56, s. 13.

13.—(1) Subject to subsection 2, the council of any county may pass by-laws to raise by debentures payable in not more than twenty years in the manner provided by *The Municipal Act*, such sums as may be necessary to meet the actual expenditure for the construction and improvement of highways under this Act not exceeding five per cent of the equalized assessment of the county, or the council may by by-law provide that the required amount shall be raised in equal annual instalments by a general county rate levied in each successive year for a period not exceeding ten years but such amount shall not exceed five per cent of the equalized assessment of the county and this Act shall apply to any money heretofore or hereafter so provided as fully as if debentures had been issued whether a by-law transferring such money to a special account under Part II and Part III of this Act has or has not been passed. Debentures. Rev. Stat., c. 243.

(2) Where the council of a county has paid over moneys raised on sinking fund account to the Treasurer of Ontario under sections 327 and 328 of *The Municipal Act*, the amount to be raised for the construction and improvement of highways under subsection 1 may be a sum not exceeding the total amount so in the hands of the Treasurer of Ontario with five per cent of the equalized assessment of the county added thereto. R.S.O. 1937, c. 56, s. 14 (1, 2). Limit of amount of county rate. Rev. Stat., c. 243.

(3) Where a by-law to raise money by the issue of debentures or by an annual rate for a term of years has received the consent of two-thirds of the members of the council present When assent of electors not required.

Rev. Stat.,
c. 243.

and voting thereon it shall not be necessary to submit the same to the electors of the county as required by *The Municipal Act*. R.S.O. 1937, c. 56, s. 14 (3) *amended*.

Temporary
advances.

(4) The council of the county may agree with any chartered bank or loan or trust corporation or with any person for temporary advances to meet the cost of the work in progress, but the total of such temporary advances shall not exceed in any one year the amount to be provided by the corporation of the county, together with the proportion of aid to be received from the Province, and the amount receivable from cities and towns as contributions on account of suburban roads under Part III, and the council of the county may pass by-laws to raise by debentures in the same manner as provided in subsection 1, such sums as may be necessary to repay such temporary advances.

Raise funds
by general
rate.

(5) In addition to or in substitution for any amount which may be raised under subsection 1, the council of a county may raise in any year by general county rate such sums as the council may deem necessary for the purposes mentioned in such subsection.

Limitation
of debt.

(6) The limitation of county debentures which may be issued under subsection 1 to five per cent of the equalized assessment of the county shall apply only as to the amount of debentures outstanding at any time and such limitation shall be exclusive of debentures the proceeds of which are applied to expenditure within the limits of an urban municipality.

Application
of proceeds
of debentures.

(7) Money raised by the issue of debentures for road construction under this Act shall be applied solely for that purpose, and shall not be used in paying any part of the current or other expenditure of the corporation, or for road repair or maintenance and if the council applies any of such money in paying current or other expenditure, or for road repair or maintenance, the members who vote for such application shall be personally liable for the amount so applied, which may be recovered in any court of competent jurisdiction.

Action of
ratepayer.

(8) If the council, upon the request in writing of a ratepayer, refuses or neglects for one month to bring an action therefor, the action may be brought by any ratepayer on behalf of himself and all other ratepayers.

Disqualifi-
cation of
members of
council.

(9) The members who vote for such application shall be disqualified from holding any municipal office for two years, R.S.O. 1937, c. 56, s. 14 (4-9).

14. The corporation of the county shall submit the by-law for the improvement of county roads or the establishment of a county road system to the Minister for approval by the Lieutenant-Governor in Council and upon receipt of the application for such approval the Minister may obtain such report upon the plan adopted by the county council as he may deem necessary and may hear the council of any local municipality which may be dissatisfied therewith before presenting the application for consideration to the Lieutenant-Governor in Council. R.S.O. 1937, c. 56, s. 15.

15. The Lieutenant-Governor in Council may approve the by-law in whole or in part and where the by-law is so approved in part only, it shall be enforced and take effect so far as approved, but it shall not be necessary for the council of the county to pass any further by-law amending the original by-law or repealing any portion thereof which has not been so approved. R.S.O. 1937, c. 56, s. 16.

16. Where the Minister is of the opinion that any highway or section of a highway assumed by a county council under this Act, has ceased to be or for some other reason is not of sufficient importance to be constructed and maintained as a county road, such highway or section thereof may be struck off the approved plan of county roads by the Lieutenant-Governor in Council, and such highway or section thereof shall thereupon revert or be transferred to the corporation of the local municipality in which it is situate. 1944, c. 23, s. 3.

17.—(1) The corporation of the county shall submit a by-law covering the estimated expenditure on roads for the calendar year to the Department for the Minister's approval, not later than the 31st day of January of the year in which the expenditure is to be made and such by-law shall include expenditures to be made by the suburban roads commission in the county. R.S.O. 1937, c. 56, s. 17 (1); 1944, c. 23, s. 4.

(2) No subsidy shall be granted by the Department to any county for work undertaken by the county which has not been provided for by a by-law duly approved by the Minister. R.S.O. 1937, c. 56, s. 17 (2).

18.—(1) Where a plan of highway improvement approved by the Lieutenant-Governor in Council under this Act is being carried out the county council shall annually and may with the consent of the Minister at any time during the progress of the work submit to the Minister,

- (a) a detailed statement of receipts and expenditures in the form prescribed by the Minister;

- (b) a declaration of the county road superintendent that the statement of receipts and expenditures is correct and that the work has been done in accordance with the requirements of the Minister and with the approval of the proper officer of the Department;
- (c) a declaration of the treasurer of the county that the statement of receipts and expenditures is correct; and
- (d) a petition for the payment of the grant, authorized by resolution of the council or in the case of an interim statement, by resolution of the county road committee. 1944, c. 23, s. 5, *part*; 1945, c. 9, s. 2.

Payment
to county.

(2) Upon receipt of the statement, declarations and petition and the approval thereof by the proper officer of the Department, the Minister may direct payment to the county treasurer out of the Fund of an amount equal to fifty per cent, or in the case of a bridge or culvert an amount not exceeding eighty per cent, of the amount of the expenditure which is properly chargeable to road improvement and in all cases of doubt or dispute the decision of the Minister shall be final. 1944, c. 23, s. 5, *part*; 1947, c. 44, s. 3.

Certain
expenditures
not included
in statement.

19. No expenditure towards which a special contribution has been or may be made from any source shall be included in a statement submitted under section 18 except with the consent of the Minister. 1944, c. 23, s. 6.

Highways
to be county
highways.

20. All highways designated and assumed by a county council in accordance with section 11 shall be maintained and kept in repair by the corporation of the county in which they are situate, and in all cases of doubt or dispute as to what constitute works of maintenance or repair, and what constitute works of construction and the purchase and maintenance and repair of road machinery, plant and equipment, properly chargeable under this Act, the decision of the Minister shall be final. R.S.O. 1937, c. 56, s. 20.

County road
system,
construction
and repair.

21. Every highway constructed or repaired as part of a county road system under this Act shall be so constructed and repaired in accordance with the requirements of the Minister. R.S.O. 1937, c. 56, s. 21; 1944, c. 23, s. 7.

County
expenditure
may include
ferry service.

22. Expenditure for which the corporation of any county may be entitled to aid to county roads under this Act, may include the maintenance by the county of a ferry service which forms a connecting link of a county road system, or

forms a link between county road systems of adjacent counties, and may also include the cost of purchasing, establishing and equipping such ferry service, but when so aided, the equipment, service, and tolls therefor, shall be subject to the approval of the Minister. R.S.O. 1937, c. 56, s. 22; 1944, c. 23, s. 8.

23.—(1) Where under *The Municipal Act* the council of a county has jurisdiction over any bridge which is over 20 feet in span and is not included in the county road system, the expenditure involved in the replacing, maintaining or improving of such bridge under the supervision of the county road superintendent in accordance with plans approved by the Department shall be deemed to form part of the expenditure in carrying out the plan of highway improvement within the county, and debentures issued by the corporation of any county, since the 8th day of April, 1926, for the purpose of constructing, replacing or improving any such bridge shall be legal, valid and binding upon the corporation of the county and the ratepayers thereof notwithstanding that the by-law authorizing the issue thereof has not been submitted to and did not receive the assent of the ratepayers in accordance with *The Municipal Act*. 1944, c. 23, s. 9, *part*.

County expenditure may include county bridges.
Rev. Stat., c. 243.

(2) The Minister may direct the payment to the corporation out of the Fund of an amount not exceeding eighty per cent of the cost of constructing, maintaining, replacing or improving any such bridge over 20 feet in span in accordance with plans approved by an officer of the Department designated by the Minister. 1944, c. 23, s. 9, *part*; 1947, c. 44, s. 4.

Aid to county bridges.

(3) The council of a county may by by-law provide that jurisdiction over all bridges of 20 feet or less in span which are not included in the county road system shall be transferred to the local municipalities in which they are situate, and thereupon all the property rights, liabilities and obligations of the county with respect to such bridges shall be transferred to and shall be vested in and imposed upon such local municipalities.

Transfer of small bridges.

(4) The council of a county, where it deems it expedient and with the approval of the Lieutenant-Governor in Council, may by by-law provide for the closing of any bridge over which the county has jurisdiction under *The Municipal Act*, or the substitution therefor of any other structure and for that purpose shall possess and may exercise as to such bridge or other structure and the approaches thereto all the powers of the council of a county as to highways and bridges included in a county road system. 1944, c. 23, s. 9, *part*.

Diverting road to avoid construction of bridge.

Intersection
of other
highways
by county
road.

24. Where a county road intersects a highway which is not a county road the continuation of the county road to its full width across the road so intersected, including the bridges and culverts thereon or touching thereon, shall be a part of the county road system except in the case of an intersection by a county road of the King's Highway, and in that case the full width of the intersection shall be deemed to be part of the King's Highway. R.S.O. 1937, c. 56, s. 24.

Sidewalks
excepted.

25. The corporation of a county shall not by reason of assuming a highway under this Act be liable for the building, maintenance or repair of sidewalks on any county road or portion thereof. R.S.O. 1937, c. 56, s. 25.

Contribution
of cities, etc.,
to improve-
ment of
county
roads.

26. When any highway leading or adjacent to any city or separated town is or is to be assumed, purchased, expropriated, widened, straightened, reconstructed or otherwise improved or requires the expenditure of a greater amount for maintenance and repair to meet the requirements of increased, heavy, constant or other extraordinary traffic to or from the city or town, beyond the requirements which, but for the existence of such city or town, would be deemed those of a standard highway for the locality, the corporation of the city or town by by-law passed with the assent of at least two-thirds of the members of the council thereof may agree with the corporation of the county to contribute such additional cost, or a proper proportion of the cost, or that the amount of the contribution of the city or town shall be determined by arbitration under *The Municipal Act*, and may, without the assent of the electors, provide by by-law for the issue of debentures payable in not more than twenty years from the date of the issue thereof to raise the amount agreed upon or awarded, or may agree with the corporation of the county for the payment of such amounts in annual instalments to be raised by annual special rate upon the rateable property in the city or town. R.S.O. 1937, c. 56, s. 26; 1945, c. 9, s. 3.

Rev. Stat.,
c. 243.

Agreement
between
local muni-
cipality
and county
for extra
work.

27.—(1) The council of a local municipality which is not separated from the county may enter into agreement with the council of the county or with the suburban roads commission providing for the widening of any county or suburban road in the local municipality or for the construction of a pavement wider than 22 feet or other special construction, thereon and for the maintenance and repair of such pavement or other special construction.

Either party
may do
work;
consent of
Minister.

(2) The agreement shall provide which of the parties is to do the work and the manner in which and the time or times at which the other party is to pay its share of the

expenditure made by the party doing the work, but no work shall be done until the written agreement executed by both parties has been submitted in triplicate to the Minister for his approval and until his written approval has been obtained.

(3) Where the agreement provides that the land required for the widening of the road is to be acquired by the local municipality, the council of the local municipality, notwithstanding section 425 of *The Municipal Act*, may pass by-laws for widening the road and acquiring by purchase or otherwise or expropriating such land, and the provisions of *The Municipal Act* as to the acquiring, occupying and taking of land for municipal purposes shall apply to the acquiring, occupying or taking of land under any such by-law.

Acquisition of land by local municipality.
Rev. Stat., c. 243.

(4) The local municipality shall convey the land so acquired to the county and thereupon the land shall become a part of the road and shall be included in the county road system and where the road has been designated and approved as a suburban road under Part III the land shall become part of the suburban road.

Transfer to county.

(5) In the case of the construction of a pavement wider than 22 feet the agreement shall provide the proportion in which the cost thereof is to be borne by the respective parties but such cost shall not include the cost of curbs, gutters, catch basins, sanitary or storm sewers or drains or any other special work, all of which cost shall be borne by the local municipality.

Apportionment of cost of construction of wider pavements.

(6) The proportion of the cost of constructing such wider pavement that is to be borne by the county or the suburban roads commission shall not be less than the proportion of the area of a strip of the pavement 22 feet in width to the total area of such pavement, and where any portion of the roadway that is to be paved is occupied by the track allowance of a street railway, for the purpose of determining such minimum proportion, the cost of constructing such track allowance including the paving thereof shall be excluded from the total cost and the area of such track allowance shall be excluded from the total area.

Minimum proportion to be borne by county or suburban roads commission.

(7) Where there is an existing pavement less than 22 feet in width on the county or suburban road and a wider pavement is agreed upon, the proportion of the cost of constructing the additional width of pavement that is to be borne by the county or the suburban roads commission shall not be less than the proportion of the area of that part of such additional width which together with the existing pavement would provide a total paved width of 22 feet to the total area of such additional width of pavement.

Idem. in case of the widening of an existing pavement.

Idem.

(8) Where there is an existing pavement 22 feet or more in width on the county or suburban road and a wider pavement is agreed upon, the agreement may provide that the cost of constructing the additional width of pavement is to be borne entirely by either of the parties or in any agreed proportion by each of them.

Apportionment of cost of maintenance.

(9) In the case of the maintenance of a pavement wider than 22 feet the agreement shall provide the proportion of the cost thereof, including the removal of snow and the application of chemicals or abrasives and the removal thereof, that is to be borne by the respective parties, but such cost shall not include the cost of maintaining curbs, gutters, catch basins, sanitary or storm sewers or drains or any other special work, all of which cost shall be borne by the local municipality.

Minimum proportion to be borne by county or suburban roads commission.

(10) The proportion of the cost of maintaining such wider pavement that is to be borne by the county or the suburban roads commission shall not be less than the proportion of the area of a strip of the pavement 22 feet in width to the total area of such pavement, and where any portion of the paved roadway is occupied by the track allowance of a street railway, for the purpose of determining such minimum proportion, the cost of maintaining such track allowance shall be excluded from the total cost and the area thereof shall be excluded from the total area.

Where councils fail to agree.

(11) Where the council of the local municipality or the council of the county or the suburban roads commission are unable to agree upon any term or condition of an agreement authorized by this section or where either council or the commission refuses to enter into such an agreement, the Minister may prescribe such term or condition or may require such an agreement to be entered into.

Debentures for local municipality's share.

(12) The council of the local municipality may pass by-laws to raise by debentures such sum as may be necessary to meet the local municipality's share of the cost of the widening of the road or the construction of a pavement under an agreement entered into under this section and it shall not be necessary to obtain the assent of the electors to any such by-law or to observe the other formalities in relation thereto prescribed by *The Municipal Act*, or such share may be assessed under *The Local Improvement Act* according to the report of an engineer.

Rev. Stat., c. 243, 215.

Subsidy to local municipality.

(13) Where the Minister has approved an agreement under this section the cost of the widening of the road, the construction of a pavement, the maintenance of a pavement,

the construction and maintenance of curbs, gutters, catch basins and any other special work properly chargeable to road improvement which is borne and paid by the local municipality in accordance with the agreement may, for the purpose of determining the grant payable to the local municipality out of the Fund, be included in the statement of expenditures on roads under the jurisdiction of the council of the local municipality submitted to the Minister under this Act, but the cost of constructing any sanitary or storm sewer or drain shall not be included in such statement.

(14) Where the agreement provides that the pavement or any part thereof is to be maintained and kept in repair by the local municipality and where the local municipality makes default in so doing and the county or the suburban roads commission becomes liable under section 453 of *The Municipal Act* for damages suffered by or occasioned to any person in consequence of such default the county or the suburban roads commission shall be entitled to the remedy over against the local municipality provided for by section 460 of *The Municipal Act*. 1950, c. 24, s. 2.

Remedy over, for damages, caused by non-repair against local municipality.

28.—(1) Where a street in any urban municipality not separated from the county is not part of the county road system but is an extension of or connects roads included in the county road system, and where it is in the public interest that such street, including the bridges thereon, should be constructed or rebuilt, an agreement for the performance of the work shall be entered into between the corporation of the county and the corporation of the urban municipality upon such terms, subject to such conditions and in such form as the Minister may prescribe or approve.

Urban extensions or connecting roads.

(2) Where the council of a county and the council of an urban municipality are unable to agree whether it is in the public interest that a street referred to in subsection 1, including the bridges thereon, should be constructed or rebuilt, the Minister may decide the issue and his decision shall be final.

Where county and municipality unable to agree.

(3) Where the council of a county and the council of an urban municipality are unable to agree upon any term or condition or the form of any agreement required to be entered into under subsection 1, or where either council refuses to enter into such an agreement the Minister may prescribe the terms, conditions or form thereof, or all of them, and such agreement may be enforced in the same manner as an agreement duly executed on behalf of both councils.

Agreements.

(4) The agreement mentioned in subsection 1 shall provide that the cost of the work to the extent of 20 feet in width

Extent of liability of county.

of the travelled portion of the roadway shall be paid by the county and the expenditure so made to the extent approved by the Minister shall form part of the expenditure of the county for the purpose of ascertaining the amount of aid which may be granted to the county under this Act.

Duty of
maintenance.

(5) A street shall not by reason of its having been constructed pursuant to this section become the property of the county but shall, after its construction, be under the jurisdiction of, and shall be maintained and kept in repair by the urban municipality.

Extent of
liability of
urban municipality.

(6) Where the roadway on a street referred to in subsection 1 exceeds 20 feet in width, all expenditure thereon rendered necessary by such excess width and by all other special work on the street shall be borne by the urban municipality, and the council of the urban municipality, with the approval of the Minister, may by by-law provide for the issue of debentures to provide for the payment of such excess cost, and it shall not be necessary to obtain the assent of the electors to any such by-law nor to observe the other formalities in relation thereto prescribed by *The Municipal Act*, or the work may be undertaken as a local improvement under *The Local Improvement Act*. 1944, c. 23, s. 11, *part*.

Rev. Stat.,
cc. 243, 215.

Disputes as
to maintenance,
etc., of
bridges and
highways.

Rev. Stat.,
c. 243.

29.—(1) Sections 462 and 464 of *The Municipal Act* shall not apply to a bridge or highway crossing or forming a boundary line between counties or between a county and a city or separated town, where the county in the latter case, or one or more of such counties in the former case have adopted a plan for the improvement of highways under this Act, and such plan includes such bridge or highway.

Disputes as
to county
boundary
lines and
bridges.

(2) Whenever there is a difference between two or more municipalities in respect of any such bridge or highway as to the corporation upon which the obligation rests, as to the building, maintaining or keeping in repair of the bridge or highway, or as to the proportions in which the corporations should respectively contribute thereto, or where the councils of two or more municipalities are unable to agree as to any action, matter or thing to be taken or done in respect of such bridge or highway, every such difference shall be determined by the Ontario Municipal Board upon an application by any corporation interested in such bridge or highway.

Hearing by
Ontario
Municipal
Board.

(3) The Board shall appoint a day for the hearing of the application, of which ten days notice in writing shall be given to the clerk of each municipality interested and shall, at the time and place appointed, hear and determine all matters in difference between the municipalities in regard to such

bridge or highway, and the Board may make such order in regard to the same as it may deem just and proper, and may by the order fix and determine the amount or proportion which each municipality shall pay or contribute toward the building, maintaining and keeping in repair of such bridge or highway.

(4) An order made by the Board under this section shall be and remain binding upon all the municipalities interested for such period as the Board may determine, and shall be final and conclusive and not subject to any appeal. R.S.O. 1937, c. 56, ss. 30, 89. Term of order.

30. The corporation of the county shall, in respect to the roads included in the county road system, have all the rights, powers, benefits and advantages conferred either by by-law or contract or otherwise upon the corporation of the local municipality or the corporations of the local municipalities which had jurisdiction over the roads before they were assumed by the corporation of the county, and the corporation of the county may sue upon such rights or under such agreements or by-laws in the same manner and to the same extent as the local municipality or municipalities might have done if the roads had not been adopted as county roads. R.S.O. 1937, c. 56, s. 32. Powers of county council over roads assumed.

31. Where, in the exercise of its powers or in the performance of its obligations under this Act, the corporation of a county finds that it is necessary to expropriate land for the purpose of opening up, widening, improving, protecting from erosion, altering or diverting a county highway, the corporation may, instead of the procedure provided by *The Municipal Act*, proceed in the manner provided by *The Public Works Act* in the case of lands taken by the Minister of Public Works for the purposes of Ontario without the consent of the owner of such lands, and the provisions of *The Public Works Act* shall *mutatis mutandis* apply, and the powers and duties of the Minister of Public Works as set out in *The Public Works Act* may be exercised and performed in the name of the corporation of the county. R.S.O. 1937, c. 56, s. 33; 1939, c. 19, s. 3. Procedure on expropriation of land. Rev. Stat., cc. 243, 323.

32. The plan and description of the lands taken, required by section 17 of *The Public Works Act* to be deposited in the registry office, shall be signed by the warden and clerk of the county and by an Ontario land surveyor, and upon the deposit of the plan and description the land shall become and be vested in the corporation of the county. R.S.O. 1937, c. 56, s. 34; 1944, c. 23, s. 12. Plan and description, filing of.

Roads in
Indian
reserves.

33. The Minister may arrange with the Indian Affairs Branch of the Department of Mines and Resources (Canada) for the construction and improvement under the supervision of the Department of Highways and in accordance with the requirements of the Minister of a road in any township or any portion of a township constituting an Indian reserve where the road forms an extension of or connecting link in a county road system and for the payment, upon the certificate of the Minister, of fifty per cent of the cost of any work done under such arrangement, such payment to be chargeable to the Fund in the same manner and subject to the like provisions as are set out in section 18. 1944, c. 23, s. 13.

PART III

SUBURBAN ROADS

Suburban
roads com-
mission.

34.—(1) The Lieutenant-Governor in Council, upon application of the council of any county having or adopting a county road system under this Act, may direct that a commission or commissions be appointed as in section 40 provided, in the case of each city or town situate within the county but separated therefrom for municipal purposes, and, subject to the approval of the Minister, each commission may designate and define roads or portions of roads in the county road system as suburban roads and the city or town shall contribute towards the construction and maintenance of such roads or portions of roads in accordance with this Part. 1944, c. 23, s. 14, *part*; 1945, c. 9, s. 4.

Deposit of
plan in
Department.

(2) A plan and description of the system of suburban roads designated by a commission shall be deposited by the commission with the Department within six months from the date of the Order in Council directing the appointment of such commission, and after the approval thereof by the Minister no alterations or amendments thereof shall be made by the commission until approved in like manner. 1944, c. 23, s. 14, *part*.

Roads to be
county
roads.

35.—(1) Roads designated as "suburban roads" shall continue to be county roads under the jurisdiction and control of the county council, the work thereon to be under the supervision of the county engineer or road superintendent but subject to the direction of the commission appointed for that purpose, and the sums expended for construction, maintenance and superintendence may be included in the statements of expenditure as provided in section 18, upon which the grants payable by the Province will be determined and paid. R.S.O. 1937, c. 56, s. 37 (1); 1944, c. 23, s. 15 (1).

(2) The work on suburban roads may be carried on under the supervision of a qualified engineer employed for that purpose by the commission in place of the county road superintendent, and all the provisions of this Act shall apply to such engineer in the same manner as to a county road superintendent, and the declaration of such engineer with respect to work and expenditure upon suburban roads shall be accepted in lieu of the declaration of the county road superintendent as required by section 18. R.S.O. 1937, c. 56, s. 37 (2); 1944, c. 23, s. 15 (2).

Engineer of commission may supervise work on suburban roads.

36.—(1) Roads designated and approved as suburban roads shall from the time of such designation and approval, be constructed, maintained and repaired under the direction of the commission, and the expenditures thereon shall be borne by the county, the city or town and the Province in the proportion of twenty-five per cent by the county, twenty-five per cent by the city or town and fifty per cent by the Province, but where expenditure is made on a bridge or culvert the Minister may direct that the Province shall bear a greater proportion, not exceeding eighty per cent thereof, in which case the balance of the expenditure shall be divided equally between the county and the city or town. 1944, c. 23, s. 16, *part*; 1945, c. 9, s. 5; 1947, c. 44, s. 7.

Commission to direct work on suburban roads.

(2) An appropriation for the purposes mentioned in this section may be made annually by resolution of the council of the county, and may be made before the designation by the commission of the roads upon which the appropriation is to be expended.

Appropriation may be by resolution of county council.

(3) The amount to be provided by the city or town shall not exceed the proceeds of a rate of one-half mill on the dollar of the value of the rateable property of the city or town, according to the last revised assessment roll, unless in any year by agreement with the council of the county, the council of the city or town shall by by-law passed by a vote of at least two-thirds of the members present and voting thereon appropriate for work on suburban roads a sum not exceeding the proceeds of a rate of two mills on the dollar of the value of such rateable property but such by-law shall not be passed until the council of the county has appropriated an equal amount for the like purposes to be expended in the same year. 1944, c. 23, s. 16, *part*.

Limit of contribution by city or town.

37. It shall be the duty of the clerk of the county to notify the city or town of the amount appropriated by the county for construction and maintenance not later than the 1st day of March in each year, and the treasurer of the city

Notice to city or town by county clerk.

or town shall transmit the equivalent amount, not later than the 1st day of November following, to the treasurer of the county by whom it shall be paid to the order of the commission. R.S.O. 1937, c. 56, s. 39.

Provision
for contribu-
tion by city
or town to
suburban
roads.

38.—(1) It shall be the duty of the council of each city or town to provide annually or from time to time an amount equal to that appropriated by the council of the county for construction and maintenance of such suburban roads, and such amount shall be a debt due to the county by the city or town.

Issue of
debentures
for city's or
town's share.

(2) For the purposes of this section the city or town shall have authority to raise from time to time such sums as may be required for construction by the issue of debentures, as in section 13 provided, but all sums required for the purposes of maintenance and repair shall be provided from the current revenue of the municipality. R.S.O. 1937, c. 56, s. 40 (1, 2).

Issuing city
or town
debentures
for county
suburban
roads.

(3) Where it appears that the rate of one-half mill on the dollar provided for in subsection 3 of section 36 is not sufficient to carry out permanent or extensive work, the council of the city or town with the approval of the Minister may raise such further sums by the issue of debentures as may be deemed necessary, and may apply a portion of the proceeds of the annual rate of one-half mill on the dollar, on paying off such debentures. R.S.O. 1937, c. 56, s. 40 (3); 1944, c. 23, s. 17.

Assent of
electors not
required.

(4) It shall not be necessary to obtain the assent of the electors to any by-law for the issue of debentures under this section, nor to observe the other formalities in relation thereto prescribed by *The Municipal Act*. R.S.O. 1937, c. 56, s. 40 (4).

Rev. Stat.,
c. 243.

Informalities
not to
invalidate
proceedings.

39. No error or omission or insufficiency in the procedure provided for by this Act shall relieve a corporation of a county or of a city or separated town from liability to contribute towards the construction and maintenance of suburban roads designated by the commission as provided by this Act, and the treasurer of a city or town which is liable to contribute towards the construction and maintenance of suburban roads as provided in this Act shall, not later than the 1st day of November in every year, forward to the treasurer of the county an amount equal to the amount appropriated by the council of the county for the construction and maintenance of such suburban roads in that year; but the amount of such contribution shall be limited as provided by section 36. R.S.O. 1937, c. 56, s. 41.

40.—(1) The laying out, construction, maintenance and Commission. repair of suburban roads designated and approved as in section 34 provided and the expenditure thereon shall be directed by a commission representing the county and the city or town and appointed as hereinafter provided. R.S.O. 1937, c. 56, s. 42 (1); 1944, c. 23, s. 18 (1).

(2) In the case of a town or of a city having a population of less than 50,000, the commission shall be composed of three How composed in case of a town or of a city of less than 50,000. persons, one to be appointed by the council of the city or town, one by the council of the county, and the third to be agreed upon by the two members so appointed, and in default of such agreement to be appointed by the Lieutenant-Governor in Council.

(3) In the case of a city having a population of 50,000 City of 50,000 or over. or over, the commission shall be composed of five persons, two to be appointed by the council of the city, two by the council of the county and the fifth to be agreed upon by the four members so appointed, and in default of such agreement to be appointed by the Lieutenant-Governor in Council. R.S.O. 1937, c. 56, s. 42 (2, 3).

(4) The councils of the city, town and county shall make Time for making appointments. their appointments of members of the commission within thirty days after the passing of the Order in Council. R.S.O. 1937, c. 56, s. 42 (4); 1944, c. 23, s. 18 (2).

(5) The members so appointed to a commission shall hold Term of office. office for a term of five years from the date of the Order in Council authorizing the commission and no longer, and at the expiration of the period and thereafter at the expiration of every period of five years, the members of the commission shall be appointed as in this section provided, but any member of the commission shall be eligible for re-appointment.

(6) Where the council of a city, town or county fails to Appointment where default made. make any appointment of a commissioner as in this section provided, such appointment may be made by the Lieutenant-Governor in Council.

(7) A member of the commission appointed by the council of the county, city or town, may be removed and another Removal of suburban road commissioners. commissioner appointed in his place by a vote of two-thirds of the members of the council present and voting thereon at any regular meeting of the council, provided that notice of the intention of the council to determine the question of the removal has been given at the next preceding meeting of the council. R.S.O. 1937, c. 56, s. 42 (5-7).

Vacancies.

(8) Where a member of the commission dies, or resigns, or is removed, the body or authority by which the member was appointed shall appoint some other person to fill the vacancy for the remainder of the term for which the person so dying, resigning or removed was appointed. R.S.O. 1937, c. 56, s. 42 (8); 1944, c. 23, s. 18 (3).

Incorporation and name.

(9) Every commission constituted under this section or under section 34 shall be a body corporate, and the name by which each such commission is to be designated shall be fixed by the Lieutenant-Governor in Council. R.S.O. 1937, c. 56, s. 42 (9).

Who ineligible to act as member of commission.

Rev. Stat., c. 243.

41. Notwithstanding anything contained in *The Municipal Act*, or in any other general or special Act, or in any municipal by-law, a person who is a member or an official of a municipal council or a member of the Assembly shall not be a member of any commission appointed under section 40. R.S.O. 1937, c. 56, s. 43; 1944, c. 23, s. 19.

Extension of suburban area into another county.

42. In the case of a city having a population of not less than 50,000, the suburban road system may be extended beyond the county in which the city is situate and may include roads outside of the county the improvement of which will be of benefit to the city. R.S.O. 1937, c. 56, s. 44; 1944, c. 23, s. 20.

PART IV

TOWNSHIP ROADS

Township road superintendent, appointment and salary.

43.—(1) The council of every township in which statute labour has been abolished by by-law shall, by by-law, appoint a township road superintendent who, subject to the direction of the council, shall lay out and supervise all work and inspect all roads within the exclusive jurisdiction of the township council, and the Minister may direct that out of the Fund fifty per cent, or such greater proportion as he may deem requisite, of the salary and expenses of such superintendent paid by the township shall be reimbursed by the Province. R.S.O. 1937, c. 56, s. 45 (1); 1944, c. 23, s. 21 (1).

Approval of by-law.

(2) A copy of the by-law making such appointment shall be transmitted to the Department within thirty days of the passing thereof, and shall be subject to the approval of the Minister and when so approved shall not be repealed or amended without the consent in writing of the Minister. R.S.O. 1937, c. 56, s. 45 (2).

(3) The township road superintendent shall conform to such requirements as the Minister may prescribe. R.S.O. 1937, c. 56, s. 45 (3); 1944, c. 23, s. 21 (2). Superintendent to obey regulations.

(4) The council of any township in which statute labour has been abolished by by-law may annually submit to the Department a statement showing the amount of salary or wages paid under this section, together with the declaration of the treasurer that the statement is correct and also the declaration of the township road superintendent that he has *bona fide* performed the duties of the superintendent, and on receipt of the statement and certificates, certified by the proper officer of the Department, the Minister may direct the Treasurer of Ontario to pay to the corporation of the municipality the amount to which the municipality may be entitled under this Act. R.S.O. 1937, c. 56, s. 45 (4). Annual statement to Department.

(5) A member of the council of the township shall not be appointed or act as township road superintendent or be employed by the township road superintendent in any capacity, and any such member who is appointed or who acts or is employed in contravention of this section shall forfeit his seat and be disqualified from sitting in the council of which he was a member at the time of his appointment or employment. R.S.O. 1937, c. 56, s. 45 (5); 1944, c. 23, s. 21 (3). Councillors disqualified as township road superintendent.

(6) Where a township receives aid from the Province in excess of sixty per cent of the cost of the work done upon any township road, the Minister may, if he deems it expedient so to do, appoint a road superintendent for the purpose of overseeing the work to be undertaken and in that case it shall not be necessary for the council of the township to appoint a road superintendent and the superintendent appointed by the Minister shall possess and exercise as to the work all the powers of a township road superintendent appointed in accordance with subsection 1. R.S.O. 1937, c. 56, s. 45 (6). Appointment by Minister.

44.—(1) The council of a township which has abolished statute labour may submit to the Department for approval such plans, specifications or by-laws as the Department may require for any or all of the following purposes of road construction, improvement or repair, namely, Grants in aid of township road work.

- (a) grading;
- (b) drainage for road purposes;
- (c) gravelling, metalling with broken stone, or the construction of any approved kind of road surface;
- (d) dust prevention, by oiling, tarring or other approved means;

- (e) the systematic maintenance or repair by dragging, gravelling or other approved means;
- (f) the construction, reconstruction or substantial improvement of culverts, bridges and approaches thereto;
- (g) the opening of a new road or the relocating, widening or straightening of any existing road;
- (h) the purchase of gravel pits, stone quarries, materials, equipment and machinery;
- (i) such other purposes of highway improvement as the Minister may approve. R.S.O. 1937, c. 56, s. 46 (1); 1944, c. 23, s. 22 (1).

Submission
of by-law
covering
estimated
expenditure.

(2) The council of the township shall submit a by-law covering the estimated expenditure on all road construction, improvement or repair for the calendar year to the Department for the approval of the Minister not later than the 28th day of February of the year in which such expenditure is to be made, and no subsidy shall be granted to any township in respect of work which has not been provided for by a by-law approved by the Minister. R.S.O. 1937, c. 56, s. 46 (2); 1944, c. 23, s. 22 (2).

Township
road
subsidy.

45.—(1) When approved by the Department the work or expenditure of any class mentioned in section 44 shall be carried out in accordance with the requirements of the Minister with regard thereto, and upon the completion of any such work or expenditure the council of the township may submit to the Minister an application in accordance with section 46 for the provincial subsidy authorized by this Part.

Cost of ferry
service may
be included.

(2) Where the township is an island, expenditure for which the corporation of the township may be entitled to aid under this Part may include the whole, or such proportion as the Minister may direct, of the cost of establishing and maintaining a ferry service between the island and the mainland by the corporation, its lessee or licensee.

Roads in
Indian
reserves.

(3) The Minister may arrange with the Indian Affairs Branch of the Department of Mines and Resources (Canada) that the Indian agent for an Indian reserve may act as road superintendent to supervise the construction, improvement and maintenance in accordance with the requirements of the Minister, of the roads in any township or portion of a township constituting the Indian reserve and where such arrangement has been made, the Indian Affairs Branch may make application in accordance with section 46 for the

provincial subsidy authorized by this Part, and this Part shall apply *mutatis mutandis*. 1944, c. 23, s. 23, *part*.

46.—(1) The council of the township shall annually and may with the consent of the Minister at any time during the progress of the work of construction, improvement or repair of township roads submit to the Minister, Particulars to be furnished.

- (a) a detailed statement of receipts and expenditures in the form prescribed by the Minister;
- (b) a declaration of the township road superintendent that the statement of receipts and expenditures is correct and that the work has been done in accordance with requirements of the Minister and with the approval of the proper officer of the Department;
- (c) a declaration of the township treasurer that the statement of receipts and expenditures is correct and that it contains no item of expenditure whether for labour or materials which was not paid to the persons performing the work or supplying the materials in actual cash or by cheque of the corporation of the township; and
- (d) a petition for the payment of the grant authorized by resolution of the council.

(2) Upon the receipt of such statement, declarations and petition and the approval thereof by the proper officer of the Department, the Minister may direct payment to the township treasurer out of the Fund of an amount equal to fifty per cent of the amount of the expenditure which is properly chargeable to road improvement and in all cases of doubt or dispute the decision of the Minister shall be final. 1944, c. 23, s. 23, *part*. Amount of provincial subsidy.

47. Notwithstanding section 46 the Minister, having regard to the economic condition of the township and the adequacy of its plan of road improvement, may direct payment to the township treasurer out of the Fund of such amount as he may deem requisite, provided that aid so granted may, Where rate of subsidy may be varied.

- (a) in the case of a bridge, be any percentage up to one hundred per cent; and
- (b) in the case of any other road improvement, any percentage up to eighty per cent,

of the amount of the expenditure which is properly chargeable to road improvement. 1949, c. 39, s. 1.

Exclusions.

48. Expenditure in respect of which aid may be granted under section 46 shall not include,

- (a) any amount levied in the township for county road purposes; or
- (b) any other road expenditure towards which a special contribution has been paid or may be payable from any source except with the consent of the Minister. 1944, c. 23, s. 24.

Contribution of city or town in a provisional judicial district to improvement of township roads.

49.—(1) The corporation of a city or town situate in a provisional judicial district, by by-law passed with the assent of at least two-thirds of the members of the council thereof, may agree with the corporation of a township situate in territory surrounding such city or town to share, as provided by subsection 2, the cost of construction, improvement, maintenance and repair of any road in such township which leads or is adjacent to such city or town or which, by reason of the existence of such city or town, is subject to extraordinary traffic.

How cost to be borne.

(2) Where the cost of construction, improvement, maintenance and repair of a road in any township is shared by a city or town under an agreement made under this section, the Minister may direct that there shall be paid to the township out of the Fund such proportion of the expenditure made on such road as is fixed under this Part for expenditure on township roads in that township and the balance of the expenditure shall be shared equally by the township and the city or town. 1947, c. 44, s. 8.

Different rates in summer resort or suburban areas.

50. The council of a township which has by by-law abolished statute labour, and

- (a) in which subdivisions have been laid out; or
- (b) portions of which are used or occupied as summer resorts or are adjacent to a city,

may by by-law separate the subdivisions or portions for the purposes of taxation under this Act from the remainder of the township by defining the limit of the subdivisions or portions and in imposing the township rate for road purposes may impose and levy a higher rate upon the subdivisions or portions than upon the remainder of the township, but no such by-law shall have effect until the same has been approved in writing by the Minister and the amount raised by increasing the rate shall not be included in determining the expenditure of the township on which any grant may be paid out of the Fund. R.S.O. 1937, c. 56, s. 52; 1946, c. 38, s. 1.

51. The Minister may direct that a subsidy under this Act shall be paid to any township in respect only of the expenditure on such road construction, improvement or repair as he may designate and in every such case the by-law of a township mentioned in subsection 2 of section 44 shall cover only the estimated expenditure on work so designated. 1940, c. 28, s. 14 (1).

Minister to direct subsidy to be paid to township.

PART V

ROADS IN TERRITORY WITHOUT MUNICIPAL ORGANIZATION

52.—(1) In this section,

Interpretation.

(a) "cost of work" includes the actual amount paid for materials and rental of machinery, the value of labour employed on the work, the salary of the secretary-treasurer of the road commissioners elected under *The Statute Labour Act* and the sheriff's costs in connection with the sale of land for arrears of statute labour; Rev. Stat., c. 372.

(b) "value of the labour employed on the work" shall be computed on the basis of the actual time worked applied to the rates of wages prevailing in the locality in which the work is performed. 1944, c. 23, s. 26, *part*; 1946, c. 38, s. 2.

(2) In any part of Ontario where there is no municipal organization the Minister may arrange with the road commissioners elected under *The Statute Labour Act* or with any person who is the owner of land therein or of any equity or rights in or relating to such land, for the construction, improvement, maintenance or repair of any road situate therein that may be designated by the Minister, and the Minister may direct payment out of the Fund of an amount equal to such proportion of the cost of the work as he may deem requisite. Roads where no municipal organization.
Rev. Stat., c. 372.

(3) Where the Minister deems it desirable that the inhabitants of any part of Ontario should become incorporated under *The Municipal Act*, the amount which shall be paid out of the Fund under this section in respect of a road in that part of Ontario shall not exceed fifty per cent of the value of the labour employed on the work. 1944, c. 23, s. 26, *part*. Where incorporation desirable.
Rev. Stat., c. 243.

PART VI

DEVELOPMENT ROADS

Designation
of develop-
ment roads.

53. The Minister may designate as a "development road" any road or proposed road which he may deem it expedient to construct, improve or maintain in order to promote or maintain settlement or development in any part of Ontario. 1946, c. 38, s. 3, *part.*

Agreement
with muni-
cipality as
to construc-
tion, etc.

54.—(1) Where a road under the jurisdiction of the council of any municipality not being a city or separated town is designated as a development road the Minister may enter into an agreement with the corporation of the municipality for the construction, improvement, maintenance or repair of the development road, and may direct payment out of the Fund of such proportion of the cost thereof as he may deem requisite.

Road not
to become
property
of Crown.

(2) A development road constructed, improved or maintained under an agreement made under subsection 1 shall not become or be the property of the Crown, but shall remain under the jurisdiction of the council of the municipality. 1946, c. 38, s. 3, *part.*

In unor-
ganized
territory.

55. Where a development road is situate in territory without municipal organization the Minister may arrange for its construction, improvement, maintenance or repair as provided in subsection 2 of section 52. 1946, c. 38, s. 3, *part.*

PART VII

ROADS IN CITIES, TOWNS AND VILLAGES

City, town
or village
may submit
expenditure
by-law.

56. The council of every city, town and village, except a city or town situate in a county but separated therefrom for municipal purposes which does not contribute towards the construction and maintenance of suburban roads under Part III, may submit to the Minister, for approval, a by-law to provide for expenditure under this Part on the construction, improvement, maintenance and repair of the roads or streets under its jurisdiction carried out in each year. 1947, c. 44, s. 9 (1), *part.*

By-law to
provide for
estimated
expenditure.

57. The by-law shall provide for the estimated expenditure to be made in the calendar year and shall be submitted not later than the 28th day of February of that year, and no subsidy shall be granted to any city, town or village in respect

of expenditure which has not been provided for by by-law approved by the Minister. 1947, c. 44, s. 9 (1), *part.*

58.—(1) Where the Minister has approved of a by-law to provide for expenditure under this Part the council of the city, town or village shall, at the close of the calendar year, and with the consent of the Minister may, at any time during the progress of the work of construction, improvement, maintenance or repair of the roads or streets under its jurisdiction, submit to the Minister, Statements to Minister.

- (a) a detailed statement of receipts and expenditures in a form prescribed by the Minister;
- (b) a declaration of the engineer or other officer of the municipality who is charged with the responsibility of directing and supervising the work that the statement of receipts and expenditures is correct and that the work has been done in accordance with the requirements of the Minister and with the approval of the proper officer of the Department;
- (c) a declaration of the treasurer of the municipality that the statement of receipts and expenditures is correct; and
- (d) a petition for the payment of the grant authorized by resolution of the council. 1947, c. 44, s. 9 (1), *part.*

(2) Upon receipt of the statement, declarations and petition and the approval thereof by the proper officer of the Department, the Minister may direct payment to the treasurer of the municipality out of the Fund of an amount equal to, Payment of subsidy to city, town or village.

- (a) in the case of a city or separated town, thirty-three and one-third per cent; and
- (b) in all other cases, fifty per cent,

of the amount of the expenditure which is properly chargeable to road improvement and where there is any doubt or dispute the decision of the Minister shall be final. 1949, c. 39, s. 3.

(3) Where the construction, improvement, maintenance or repair of a street in a town or village which is a connecting link or extension of the King's Highway is carried out under an agreement made with the Department under section 78, the expenditure made by the town or village on such street shall not be included in the statement submitted to the Minister under this section unless the work on which the expenditure is made is additional to that provided for in the In case of expenditure on connecting link of the King's Highway.

agreement and is properly chargeable to road improvement under this Part. 1950, c. 24, s. 5.

Expenditures
eligible for
subsidy.

59. Expenditures which shall be deemed to be properly chargeable to road improvement shall include those made for the purpose of,

- (a) opening a new road or street and acquiring the necessary land therefor;
- (b) clearing a road or street of obstructions;
- (c) widening, altering or diverting a road or street;
- (d) subject to *The Public Service Works on Highways Act*, taking up, removing or changing the location of appliances or works placed on or under a road or street by an operating corporation;
- (e) constructing and maintaining bridges, culverts or other structures other than sewers incidental to the construction of a road or street;
- (f) grading;
- (g) constructing and maintaining an approval base for the road surface including the installing and maintaining of approval under-drainage therefor other than sewers;
- (h) constructing and maintaining any approved type of road surface;
- (i) constructing and maintaining necessary curbs, gutters and catch basins;
- (j) clearing snow and applying chemicals or abrasives to icy surfaces; and
- (k) such other purposes of road improvement as the Minister may approve. 1947, c. 44, s. 9 (1), *part*.

Interpre-
tation.

60.—(1) In this section, “subdivision” means the whole or any part of an original township lot which has been subdivided into building lots.

Opening or
constructing
street in
subdivision
not eligible.

(2) Expenditures made for opening or constructing a street shall not be deemed to be properly chargeable to road improvement under this Part unless by reason of its being or its being designed or intended to be a main thoroughfare for through traffic it is in the public interest that the street should be opened or constructed, but in no case where the land in a subdivision is being developed and sold for speculation shall

the expenditure made for opening or constructing a street therein be deemed to be so chargeable. 1947, c. 44, s. 9 (1), *part.*

61. No expenditures except those which are provided for entirely by the aid which may be granted under this Part and out of funds raised by a general rate levied upon all the rateable property in the municipality, or by the issue of debentures to be retired by a general rate so levied shall be included in the statement submitted under section 58 except with the consent of the Minister. 1947, c. 44, s. 9 (1), *part.* Expenditures, how provided for.

62. In the case of a city or separated town, the Minister may require that of the expenditure which shall be made under this Part so much as is necessary shall be made on the construction, improvement, maintenance and repair of the roads or streets which he may designate as extensions or connecting links of the King's Highway. 1947, c. 44, s. 9 (1), *part.* King's Highway extension or connecting link.

63. In the case of a town or village forming part of a county for municipal purposes, the Minister may require that of the expenditure which shall be made under this Part so much as is necessary shall be made on the maintenance of any county road extension or connecting link in the town or village. 1947, c. 44, s. 9 (1), *part.* County road extension or connecting link.

PART VIII

THE KING'S HIGHWAY

64.—(1) The Lieutenant-Governor in Council, upon the recommendation of the Minister, may designate any highway or a system of public highways throughout Ontario to be laid out, acquired, constructed, assumed, repaired, relocated, deviated, widened and maintained by the Minister as the King's Highway. Highways may be assumed by the Province.

(2) Every highway heretofore or hereafter constructed, designated and assumed in accordance with this section shall be known as "the King's Highway". R.S.O. 1937, c. 56, s. 53. "The King's Highway."

65. The King's Highway and all property acquired by Ontario under this Act shall be vested in His Majesty and shall be under the control of the Department. R.S.O. 1937, c. 56, s. 54. Vested in His Majesty.

Procedure
for acquiring
a highway.

66.—(1) Subject to the provisions of section 72, when the Minister desires to lay out a portion of the King's Highway or to acquire any existing highway under this Act, either temporarily or permanently, he shall deposit in the proper registry office a plan and description of the highway, signed by himself, or by the Deputy Minister, or by an Ontario land surveyor, and such highway shall thereafter become and be vested in the Crown as from such date as the Minister may determine, by notice in *The Ontario Gazette*, and the Department shall give notice in writing thereof to each of the municipalities interested.

Intersecting
highways.

(2) Where a highway assumed, acquired or laid out as part of the King's Highway intersects a highway which is not part of the King's Highway, the continuation of the King's Highway to its full width across the highway so intersected, including bridges and culverts thereon, shall be a part of the King's Highway.

Preliminary
route plan.

(3) When for the purposes of this section it is deemed advisable to deposit in a registry office a preliminary route plan of any highway or lands acquired or to be acquired therefor by the Minister, such preliminary route plan shall be of full effect as provided by subsection 1, and shall confer upon the Minister authority to acquire and take possession of the road or lands, but such plan may at any time thereafter be replaced by a completed plan and description of the road or lands so acquired. R.S.O. 1937, c. 56, s. 55.

Right to
open up
and use
original road
allowance.

67. Notwithstanding anything in any other Act, an original road allowance which has not been opened or which has been occupied or partly occupied by an abutting owner or other person may be entered upon, taken, used and occupied for the purposes of the King's Highway provided that where any person has acquired the title to any land taken under this section, he shall be entitled to the like compensation as in the case of land expropriated for the purposes of the King's Highway. R.S.O. 1937, c. 56, s. 56.

Property
may be
acquired
or expro-
priated.

68. The Minister may, for and in the name of His Majesty, purchase or acquire, and subject as hereinafter mentioned may, without the consent of the owner thereof, enter upon, take and expropriate any land or property which he may deem necessary for the use or purposes of the Department or for making compensation in whole or in part, to any person whose land or property has been entered upon, taken, expropriated or acquired under this Act. R.S.O. 1937, c. 56, s. 57.

Expropria-
tion of land.

69.—(1) Where the Minister receives from the Niagara Falls Bridge Commission, a corporation incorporated under

the laws of the United States of America by joint resolution of the Senate and House of Representatives in Congress assembled, dated the 16th day of June, 1938, referred to in this section as "the Commission", a copy of a resolution of the Commission sealed with the seal and signed by the chairman of the Commission, stating that the Commission requires land or property located in Ontario therein described for the purposes of the Commission or where the Minister deems any land or property necessary for the purposes of the Commission or for the purpose of constructing a highway to connect any bridge of the Commission, or any approach thereto, with any highway, the Minister may, without the consent of the owner thereof, authorize the Commission and his or its agents, representatives, employees and servants, or any of them, to enter upon such land or property and may take and expropriate such land and property in the same manner as he may take and expropriate land or property which he may deem necessary for the use or purposes of the Department.

(2) The provisions of this Act relating to the entering upon, taking, expropriating and acquiring and disposing of and compensation for land and property required for the purposes of the Department and sections 8 to 38 of *The Public Works Act* shall apply *mutatis mutandis* to the entering upon, taking, expropriating and acquiring and disposing of and compensation for land and property so taken and expropriated. Application of Rev. Stat., c. 323.

(3) Where the Minister has acquired land or property under this section for the purposes of the Commission, he may sell, transfer or convey such land and property to the Commission, or to any person whom the Commission may direct, on such terms and subject to such conditions as he may deem proper. 1939, c. 19, s. 4. Power to sell land to Commission.

70. The Minister may acquire either alone, or jointly with a municipal corporation or corporations, such land or property as may be deemed necessary for procuring stone, gravel or other material for use in making, maintaining or repairing the King's Highway, or any other highway, or otherwise deemed necessary for the use of the Department. R.S.O. 1937, c. 56, s. 58. Land may be acquired for gravel, etc.

71.—(1) All property, real or personal, no longer required for the use of the Department, may be sold, leased or disposed of by the Minister. R.S.O. 1937, c. 56, s. 59 (1). Property may be sold, etc.

Highway may be disposed of, or revert or be transferred to municipality.

(2) The Lieutenant-Governor in Council upon the recommendation of the Minister may direct that any highway or portion or section thereof for which an alternative route has been substituted, or which is no longer required by the Department for the purpose of the King's Highway, or which from any cause should not remain under the jurisdiction of the Minister, may be closed to traffic or may be sold, leased or disposed of by the Minister, or may direct that the highway, or portion or section of a highway, shall revert to the municipality previously liable for the maintenance and repair of the highway, or be transferred to the municipality within which it is situate, and the municipal corporation shall thereupon be in possession and control of the highway from and after a date to be named by the Lieutenant-Governor in Council. R.S.O. 1937, c. 56, s. 59 (2); 1944, c. 23, s. 27.

Rev. Stat.,
c. 323
to apply.

72.—(1) When a highway which is a toll road, not under the immediate control of a municipal corporation, or other land or property is to be entered upon, taken or used by the Department under the compulsory powers conferred by this Act, the Minister shall proceed in the manner provided by *The Public Works Act*, and sections 8 to 38 of that Act, except as in this Act otherwise provided, shall apply *mutatis mutandis* to the Department and the officers thereof.

Notice as to
land entered
upon, taken
or used.

(2) Where land has been entered upon, taken or used by the Minister under the compulsory powers conferred by this Act the Minister shall, within sixty days after the registration of the plan and description of the land in the registry office, give notice to the owner,

- (a) if the owner is known and his residence is known, by serving upon him or by mailing by registered post addressed to him at his last known place of abode, a notice describing the land taken or the right or easement exercised or intended to be exercised in, upon or over the land, and the nature of the work to be done and the date of the registration of the plan and description, and stating that every person having any claim to compensation must file the same in the office of the Minister within six months after such registration, or, in the case of land injuriously affected, within six months after the injury complained of, or in the case of a continuing injury, within one year from the time when the injury began or became known to him; or
- (b) if the owner is unknown or his residence is unknown, by the publication of a similar notice once a week for at least three weeks in some newspaper having

a general circulation in the county or district in which the land affected is situate.

(3) When land is to be or has been purchased or acquired by the Minister under any of the powers conferred by this Act, along or adjacent to or in the vicinity of the King's Highway, the land so acquired may be shown on a plan of the highway marked "Land Plan", signed by the Minister or by the Deputy Minister and deposited in the proper registry office, and the plan shall be of full effect in establishing the ownership of the land by Ontario under this Act or *The Public Works Act*. Filing land plan on taking land. Rev. Stat., c. 323.

(4) A land plan deposited in any registry office as in subsection 3 provided may be amended from time to time upon the authority of the Minister or Deputy Minister, or another or similar plan may be substituted therefor upon like authority, for the purpose of showing land or additional land purchased or acquired, or for the purpose of indicating thereon land sold or disposed of by the Minister. R.S.O. 1937, c. 56, s. 60. Amendment of land plan.

73. The cost of material, labour, special engineering or other services, land and property or options thereon, plant, machinery and equipment and the repair and maintenance of plant, machinery or equipment and all expenditure in or about any work undertaken by the Minister under this Act or incidental thereto, or contracts therefor, shall be paid out of the Fund upon the certificate of the Minister, and for that purpose accountable cheques may from time to time be issued against the Fund in favour of the Department upon the requisition of the Minister. R.S.O. 1937, c. 56, s. 61. How cost to be provided.

74. Where the corporation of a county or other municipality, park commission, board, or commission is in default with respect to any payments due to the Province for its share of the expenditure on the King's Highway up to the 31st day of December, 1934, the amount of the arrears shall bear interest from the date of the default at such rate of interest as the Minister may from time to time determine, and the amount of the arrears and interest may be deducted from any sums due to the county or municipality by the Province. R.S.O. 1937, c. 56, s. 62. Deductions from grants on default in municipal contributions.

75. Where a road assumed as the King's Highway under this Act was at the time it was so assumed under the control of a park commission, or any board or commission established by statute and having authority over the area in which the road lies, the amount or proportion of expenditure may be Contributions by commission or other controlling body.

apportioned by the Minister to and shall be a debt due to Ontario from such park commission, board or commission and shall be payable out of the revenue. R.S.O. 1937, c. 56, s. 63.

Provision
for payment.

76. It shall be the duty of such park commission, board or commission to provide for the payment of any contribution required under section 75 in its estimates of annual expenditure, and every such park commission, board or commission shall have power to do all things necessary to provide for the payment of such contribution, and where authorized by statute to levy rates upon property within its jurisdiction, shall levy all necessary rates for the purposes hereof, anything in any Act under which such park commission, board or commission is established to the contrary notwithstanding. R.S.O. 1937, c. 56, s. 64.

Proportion
of cost,
debt due
Province.

77. The proportion of cost, as estimated under sections 75 and 76 shall be a debt due to Ontario by such park commission, or other board or commission and shall be paid to the Department within six months from the date of notification sent by registered post to such board or commission. R.S.O. 1937, c. 56, s. 65.

Payment
out of
general
funds for
mainten-
ance.

Rev. Stat.,
c. 243.

78.—(1) The proportion of expenditure on repair and maintenance to be paid by the municipal corporation shall in all cases be provided out of the general funds of the municipality, but expenditure for construction may be met by the issue of debentures under *The Municipal Act*.

Issue of
debentures
by municip-
alities.

Rev. Stat.,
c. 243.

(2) The council of each municipality may pass by-laws for issuing and may issue debentures maturing within a period not exceeding twenty years from the date of issue of the debentures and payable in any manner provided by *The Municipal Act*, for an amount estimated as sufficient to produce the sum required to pay the share of the expenditure for construction apportioned to the municipality and it shall not be necessary to obtain the assent of the electors to any by-law for the issue of such debentures or to observe the other formalities in relation thereto prescribed by *The Municipal Act*.

Continuing
King's
highway
through
city, town
or village.

(3) Where it is deemed by the Minister desirable and expedient that a highway or portion thereof within a city, town or village, including any necessary bridges, should be constructed as a connecting link between portions of the King's Highway, the Department may designate the highway or portion thereof within the city, town or village to be constructed by the city, town or village, and the council of the corporation of the city, town or village may pass by-laws for

issuing, and may issue debentures under *The Municipal Act*, ^{Rev. Stat., c. 243.} to be payable in such period as the Department may approve but not exceeding twenty years from the time or times when such debentures are issued, for an amount sufficient to pay the cost of the construction of the highway and bridges within the city, town or village, but it shall not be necessary for the council to obtain the assent of the electors to any by-law for the issue of debentures under this subsection or to observe the formalities in relation thereto prescribed by *The Municipal Act*.

(4) Work required to be constructed under subsection 3 ^{Idem.} may be undertaken as a local improvement under *The Local Improvement Act* and in that case the council may by by-law ^{Rev. Stat., c. 215.} fix the proportion of the cost of the work to be borne by the corporation at large as the council may deem proper. R.S.O. 1937, c. 56, s. 66 (1-3).

(5) Where it is deemed by the Minister desirable and ^{Agreement for work on connecting roads.} expedient an agreement may be entered into with the corporation of a town not being a separated town or of a village for the construction, improvement, maintenance and repair therein by the municipality or by the Department of any highway which is a connecting link or extension of the King's Highway. R.S.O. 1937, c. 56, s. 66 (4); 1944, c. 23, s. 28.

(6) The agreement may provide that a proportion of the ^{Cost of work.} cost of the work shall be paid out of the Fund and the remainder shall be borne and paid by the town or village but the proportion which shall be paid out of the Fund shall not exceed,

- (a) in the case of a town or village having a population of not more than 2,500, a sum equal to the cost of a width of roadway not less than 22 feet nor more than the width of the roadway on the King's Highway approaching the town or village where such width exceeds 22 feet; and
- (b) in the case of a town or village having a population of more than 2,500, a sum equal to fifty per cent of the cost of a width of roadway not less than 22 feet nor more than 33 feet.

(7) A road shall not by reason of its having been constructed or improved under this section become or be the property of the Crown, but every such road shall remain under the ^{Jurisdiction unchanged.} jurisdiction of the council of the municipality in which it is situate. 1949, c. 39, s. 4.

Highway
may be
closed to
traffic.

79.—(1) While the construction, repair or improvement or any work authorized by this Act is in progress on the King's Highway the Minister or any engineer authorized by him may close the highway or any portion thereof to traffic for such time as he may deem necessary, and any person using a highway so closed shall do so at his own risk, and shall not have a right to recover damages in case of accident or injury.

Penalty for
removing
notice or
barrier.

(2) Every person who uses any highway so closed to traffic or who removes or defaces any notice or obstruction placed thereon by lawful authority shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$50 and shall also be liable for any damages or injury done to the highway or to the property of the Department occasioned by such trespass.

Alternative
routes
during work
on roads.

(3) While the construction, repair or improvement of the King's Highway or any work authorized by this Act is in progress on the King's Highway, the Department may provide and keep in repair any reasonable alternative route for traffic, including a municipal highway, or may enter into an agreement with the council of any municipality, or may make a grant to any municipality for that purpose, and any expenditure or grant under this section shall be apportioned as a part of the cost of the work in progress on the King's Highway by reason of which the alternative route is necessary. R.S.O. 1937, c. 56, s. 67.

Department
may exer-
cise powers
of municipal
corporation.

80.—(1) The Department shall have, within the limits of any municipal corporation along the course of the roadway, all the powers which may be exercised by a municipal corporation authorized to lay out, maintain and construct a highway.

Previous
rights and
agreements.

(2) The Department shall have in respect to the King's Highway, all the rights, powers, benefits and advantages conferred either by by-law or contract or otherwise upon the local or county municipality or municipalities which had jurisdiction over the road before the road was assumed by the Province, and the Department may sue upon such rights or under such agreement or by-laws in the same manner and to the same extent as the local municipality or municipalities might have done if the road had not been adopted as the King's Highway.

Right of
Department
to copies of
by-laws, etc.

(3) Where a by-law, contract or agreement covers several roads in a municipality, including the road adopted as the King's Highway, the Department shall be entitled to a copy of the by-law, contract or agreement from the municipality

or municipalities and the Department shall have the right to inquire into and ascertain facts concerning all such by-laws, contracts or agreements, the amounts of rents or other payments provided for in the same, the terms and conditions under which such agreements were made and any other particulars in connection with the same. R.S.O. 1937, c. 56, s. 68.

81. Notwithstanding anything in any general or special Act or in any by-law, resolution, licence of occupation, agreement or other act of a municipal corporation, no street railway or electric railway shall be laid down, constructed or operated upon the King's Highway except with the consent of the Lieutenant-Governor in Council and under and subject to such terms and conditions as he may impose, but this section shall not apply to any railway or part of a railway now in operation, and shall not be construed to affect or prejudice the rights, franchises and privileges of any company owning or operating such railway; provided that the company shall not move its rails to or upon the highway except with the consent of the Minister. R.S.O. 1937, c. 56, s. 69. Electric and street railways.

82.—(1) Where a street railway or electric railway has constructed its line upon any part of the King's Highway and has undertaken or is required by law to fill in or pave the space between the rails of the railway, the Department may construct the pavement or roadway between the rails of the same material and in the same manner as on that part of the roadway lying on either side of the rails, and so much of the cost of the work between the rails as will equal what should be expended by the company in the fulfilment of its legal obligations shall be paid by the company to the Department upon demand. Pavement between rails.

(2) In determining the amount payable by the company, allowance shall be made for the relief of the company from the work of keeping the space between the rails filled in or paved and the substitution of a durable pavement for such work. Fixing contribution by company.

(3) If the company and the Department are unable to agree on their respective shares of the cost of constructing the pavement or roadway between the rails the matter in dispute shall be determined by the Ontario Municipal Board, and the decision of the Board shall be final and conclusive and shall not be subject to any appeal. R.S.O. 1937, c. 56, ss. 70, 89. Application to Board in case of disagreement.

83.—(1) The Department may plant trees upon the King's Highway, and the cost thereof shall be part of the cost of repair and maintenance. Planting trees.

Cutting
trees, etc.

(2) No person, corporation or commission shall injure, destroy, cut or prune any tree within the limits of the King's Highway, without first obtaining the consent of the Department, and any sums received in compensation for trees so injured, destroyed, cut or pruned, shall be payable to the Department.

Bonus for
planting
trees.

(3) The Department may pay a bonus not exceeding seventy-five cents for each elm, maple or other approved nut or ornamental tree planted by any owner of land fronting on the King's Highway and planted in accordance with the regulations of the Department and under its direction.

Bonus
chargeable
to Fund.

(4) The bonus shall be chargeable to the Fund and payable upon a certificate of the resident engineer of the Department giving the name of the person entitled to the bonus, the number of trees of each species planted and the amount of the bonus to which the person is entitled and certifying that the trees have been planted for a period of three years and that they are alive, healthy and of good form. R.S.O. 1937, c. 56, s. 71 (1-4).

Agreements
re fences.

(5) The Minister may agree with the owners or occupants of property adjoining the King's Highway with respect to the moving, removal or construction of a wire or other type of fence along the King's Highway and may make compensation therefor.

Removal
of obstruc-
tions ad-
jacent to
highway.

(6) The Minister may direct the removal of any tree, shrub, bush, hedge, fence, signboard, gasoline pump, building or other object growing or standing on lands adjacent to the highway where in his opinion the safety or convenience of the travelling public so requires, or when any such object might cause the drifting or accumulation of snow or is injurious to the roadbed, but subject to the payment of such compensation as may be agreed upon or as may be determined in the manner provided by section 72. R.S.O. 1937, c. 56, s. 71 (6, 7).

Grading
approaches
to King's
Highway.

84.—(1) Where it is deemed advisable to change the grade or make other alterations upon any road intersecting or affording access to the King's Highway, or giving access to private property, the cost of any changes so made shall be part of the cost of the construction of the King's Highway, and shall be borne and paid accordingly.

Consent to
closing of
road con-
necting with
King's
Highway.

(2) A municipality shall not close or divert any road or road allowance entering or touching upon or giving access to the King's Highway without the consent of the Lieutenant-Governor in Council upon the report of the Minister. R.S.O. 1937, c. 56, s. 72.

85.—(1) Notwithstanding anything in any general or special Act contained, no municipal corporation, commissioners acting for a municipal corporation, and no commission, company or individual shall obstruct or deposit material upon, nor shall they enter upon, take up or in any way interfere with the King's Highway for the purpose of laying down or repairing any drain, sewer, water pipe, gas pipe, conduit or any other structure beneath the surface of the highway, except with the consent of the Minister and under and subject to such terms and conditions as to the manner and location of the work, the times at which it is to be performed, the disposal of material, and the replacing of the surface as the Minister may prescribe. Laying pipes, etc.

(2) Every person who violates any of the provisions of this section shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$50 and not more than \$1,000. R.S.O. 1937, c. 56, s. 73. Penalty.

86.—(1) The Minister may make regulations respecting the use of the King's Highway by any class of vehicles or animals, and may impose penalties for violation thereof, but no such regulations shall have any force or effect until approved by the Lieutenant-Governor in Council after notice to the municipal corporation affected thereby. Regulating traffic.

(2) Notwithstanding anything in any other Act, all fines and penalties recovered for offences committed on the King's Highway under this Act shall, when collected, belong to and be paid to the Department. R.S.O. 1937, c. 56, s. 74 (1, 2). Application of fines.

(3) Every person who, being the owner of horses, cattle, swine or sheep, suffers or permits the same or any of them to run at large within the limits of the King's Highway shall be guilty of an offence and on summary conviction shall be liable to a penalty, for every horse found at large upon the highway, of not more than \$5; for every head of cattle found at large upon the highway, of not more than \$3; and for every hog, sheep or goat found at large upon the highway, of not more than \$1; provided that this subsection shall not create any civil liability on the part of the owner of horses, cattle, swine or sheep for damages caused to the property of others as a result of the horses, cattle, swine or sheep running at large within the limits of the King's Highway. R.S.O. 1937, c. 56, s. 74 (3); 1939, c. 19, s. 5. Horses, cattle, etc., on highway.

87.—(1) Every portion of the King's Highway shall be maintained and kept in repair by the Department, and except as to the contribution towards such maintenance and repair provided for in this Act, the corporation of any municipality Department to maintain and repair.

in which the highway is situate shall be relieved from any liability therefor, but this shall not apply to any sidewalk or municipal undertaking or work constructed or in course of construction by the corporation of any municipality, or which a municipal corporation may lawfully do or construct upon the highway, and the municipal corporation shall be liable for want of repair of the sidewalk, municipal undertaking or work, whether the same be the result of nonfeasance or misfeasance, in the same manner and to the same extent as in the case of any other like work constructed by the municipal corporation.

Liability for damages in case of default.

(2) In case of default by the Department to keep any portion of the King's Highway in repair, the Department shall be liable for all damages sustained by any person by reason of the default, and the amount recoverable by any person by reason of the default may be agreed upon with the Department before or after the commencement of any action for the recovery of the damages. R.S.O. 1937, c. 56, s. 75 (1, 2).

Insufficiency of fence, etc.

(3) No action shall be brought against the Department for the recovery of damages caused by the presence or absence or insufficiency of any wall, fence, guard rail, railing or barrier or caused by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or upon the highway lands or any part thereof not within the travelled portion of the highway. 1939, c. 19, s. 6.

Limitation of action.

(4) No action shall be brought for the recovery of damages occasioned by such default, whether the want of repair was the result of nonfeasance or misfeasance, after the expiration of three months from the time when the damages were sustained.

Notice of claim.

(5) No action shall be brought for the recovery of the damages mentioned in subsection 2, unless notice in writing of the claim and of the injury complained of has been served upon or sent by registered post to the Department within ten days after the happening of the injury.

When failure to give notice not to bar action.

(6) The failure to give or the insufficiency of the notice shall not be a bar to the action, if the court or judge before whom the action is tried is of the opinion that there is reasonable excuse for the want or insufficiency of the notice and that the Department was not thereby prejudiced in its defence.

Judgment, how payable.

(7) All damages and costs recovered under this section and any amount payable as the result of an agreement in settlement of any claim for damages which has been approved

of by counsel in writing shall be payable in the same manner as in the case of a judgment recovered against the Crown in any other action.

(8) In any action under this section against the Department, the defendant may be described as "His Majesty the King in right of the Province of Ontario, represented by the Minister of Highways for the Province of Ontario", and it shall not be necessary to proceed by petition of right or to procure the fiat of the Lieutenant-Governor or the consent of the Attorney-General before commencing the action but every such action may be instituted and carried on and judgment may be given thereon in the same manner as in an action brought by a subject of His Majesty against another subject. Style of action.

(9) Actions against the Department for the recovery of the damages mentioned in subsection 2 shall be tried by a judge without the intervention of a jury, and the trial shall take place in the county in which the default occurred. Action to be tried without jury.

(10) The liability imposed by this section shall not extend to any case in which a municipal corporation owning or having jurisdiction over the highway would not have been liable for the injury sustained. R.S.O. 1937, c. 56, s. 75 (3-9). Liability not to exceed that of municipality.

88.—(1) The corporation of any municipality through or in which any part of the King's Highway is situate or any owner of abutting property may enter into an agreement with the Minister for the construction of a pavement or roadway of a greater width or with different specifications to those for the remainder of the roadway, and the Department may construct a pavement or roadway of such additional width or varied specification through the municipality or such portion thereof as may be agreed upon. R.S.O. 1937, c. 56, s. 76 (1); 1944, c. 23, s. 29. Agreement for construction of greater width of pavement.

(2) The additional cost entailed under such agreement to be borne by a municipal corporation may be raised by the corporation by a special tax or by the issue of its debentures under *The Local Improvement Act* or by the issue of debentures under *The Municipal Act*, and debentures issued under either Act shall be payable within a period not exceeding twenty years from the date of the debentures, provided that it shall not be necessary to obtain the assent of the electors to any by-law for the issue of such debentures under *The Municipal Act*, nor to observe any of the provisions of *The Local Improvement Act* with respect to the undertaking of works as local improvements. R.S.O. 1937, c. 56, s. 76 (2). Raising cost of special work. Rev. Stat., cc. 215, 243.

Construction
of works for
transporta-
tion of
materials.

89. The Minister may construct and operate such works upon any highway leading to or in the neighbourhood of the King's Highway as he may deem necessary or expedient for the purpose of transportation of materials or supplies, or he may agree or contract with any railway or other company so to do, or may lease or acquire land or property and construct and operate works thereon for such purposes. R.S.O. 1937, c. 56, s. 77.

Drainage of
the King's
Highway.

Rev. Stat.,
c. 105.

90.—(1) The Deputy Minister or any officer of the Department specially designated for that purpose by the Deputy Minister, may initiate and carry out proceedings under *The Ditches and Watercourses Act* for the purpose of procuring proper drainage for the King's Highway, and shall have authority to file notices and declarations as owner with the clerk of the local municipality or municipalities, or may receive notices where a private person is the initiating party, in accordance with the procedure prescribed in that Act but no drainage works shall be constructed upon the King's Highway under any Act without the consent of the Department.

Drainage
engineer for
Department.

Rev. Stat.,
c. 105.

(2) The Minister or Deputy Minister may from time to time designate one or more engineers of the Department to be the engineer or engineers authorized to carry out the provisions of *The Ditches and Watercourses Act* with respect to the King's Highway or other property under the control of the Department, and every engineer so designated shall have all powers and perform all duties on behalf of the Department required of an engineer appointed by a municipality under that Act. R.S.O. 1937, c. 56, s. 78.

Reference of
claims, etc.,
to Ontario
Municipal
Board.

Rev. Stat.,
c. 323.

91.—(1) Notwithstanding anything in this Act or in *The Public Works Act*, where any claim is made for damages or compensation in respect of land affected or taken or in respect of any work constructed or in course of construction, or as to the right of the Department to do or undertake any work under this Part, or in respect to any injury alleged to have been done to any person or property in the course of anything done or purporting to be done under this Part, no action or other proceeding shall lie in respect of such matter but the same shall be heard and determined by the Ontario Municipal Board.

Limitation
of claims
for compen-
sation.

(2) No such action or other proceeding shall lie in respect of any such claim unless notice in writing of the claim and of the injury complained of has been filed with the Department within six months after the injury complained of, or in the case of a continuing injury, within one year from the time when

the injury began or became known to the complainant. R.S.O. 1937, c. 56, s. 79 (1, 2).

(3) The decision of the Board shall be final and conclusive and shall not be subject to any appeal. R.S.O. 1937, c. 56, ss. 79 (3), 89. Decision of Board to be final.

92.—(1) In this section, “Board” means Ontario Municipal Board. Interpretation.

(2) The Lieutenant-Governor in Council, upon the recommendation of the Minister, may designate any portion of the King’s Highway as a controlled-access highway and all the provisions of this Act relating to the King’s Highway as well as the provisions of this section shall apply to every controlled-access highway. Controlled-access highways.

(3) Subject to the approval of the Board, the Department may close any county, township or other road which intersects or runs into a controlled-access highway. Closing roads.

(4) The Board may direct that notice of any application for approval of the closing of a road under this section shall be given at such times, in such manner and to such persons as the Board may determine, and may further direct that particulars of claims in respect of land injuriously affected by the closing of the road shall be filed with the Board and the Department within such time as the Board shall direct. Notice of application for approval of closing road.

(5) Notwithstanding subsection 2 of section 91, no claim by or on behalf of any person who has not filed the particulars of claim within the time directed by the Board shall be allowed except by leave of the Board. Claim, when not to be allowed.

(6) Upon the hearing of the application for approval of the closing of a road, the Board may make such order as it deems proper refusing its approval or granting its approval upon such terms and conditions as it deems proper, and any order of the Board approving of the closing of a road may contain provisions, Order of Board.

- (a) determining the portion or portions of the road which shall be closed;
- (b) providing that the approval shall be subject to the making of compensation to persons whose land is injuriously affected by the closing of the road,
 - (i) by the payment by the Department to any of such persons of such damages as may be fixed by the Board,

- (ii) by the providing of another road for the use of any of such persons,
- (iii) by the vesting of any portion of the road allowance so closed in any of such persons notwithstanding any other Act, and
- (iv) in such other manner as the Board may deem proper;
- (c) providing for the payment of the costs of any person appearing on such application and fixing the amount of such costs; and
- (d) providing for the doing of such other acts as in the circumstances it deems proper.

Closing
road.

(7) Upon the approval of the Board being so obtained but subject to the provisions of the order of the Board made on the application for such approval, the Department may do all such acts as may be necessary to close the road in respect of which the application is made.

Idem.

(8) Where, at any time after making application for the approval of the Board of the closing of a road, the Department discontinues its application or, having obtained such approval, does not proceed with the closing of the road and does not pay the compensation provided for in the order of the Board, the Board may, upon the application of any person whose land would be injuriously affected by the closing of the road and who has appeared upon such application for approval, make such order as to costs against the Department as it deems proper and may fix the amount of such costs.

Appeal.

(9) Any person who claims to be injuriously affected by the closing of a road may, by leave of the Court of Appeal, appeal to that court from any order of the Board approving the closing of such road, and the Department may, upon like leave, appeal from any order of the Board made on an application under this section.

Leave to
appeal.

(10) The leave may be granted on such terms as to the giving of security for costs and otherwise as the court may deem just.

Practice and
procedure
on appeal.

(11) The practice and procedure as to the appeal and incidental thereto shall be the same, *mutatis mutandis*, as upon an appeal from a county court and the decision of the Court of Appeal shall be final.

(12) Section 98 of *The Ontario Municipal Board Act* shall not apply to any appeal under this section. Rev. Stat., c. 262, s. 98., not to apply.
part.

93.—(1) Notwithstanding any general or special Act, regulation, by-law or other authority, no person shall, except Controlled-access highways, control of. under a permit therefor from the Minister,

- (a) place, erect or alter any building, structure or fence, or any part thereof, or place any tree, shrub or hedge, or any part thereof, upon or within 150 feet of any limit of a controlled-access highway, or upon or within 600 feet of any limit of a highway that intersects or runs into a controlled-access highway for a distance of 600 feet from any limit of the controlled-access highway;
- (b) place, erect or alter any power line, pole line or other transmission line, or any part thereof, upon or within one-quarter mile of any limit of a controlled-access highway;
- (c) place, erect or alter any gasoline pump, or any part thereof, upon or within 150 feet of any limit of a controlled-access highway, or upon or within 600 feet of any limit of a highway that intersects or runs into a controlled-access highway for a distance of 600 feet from any limit of the controlled-access highway;
- (d) place, erect or alter any sign, notice or advertising device, or any part thereof, other than a sign not more than two feet by one foot displaying the name of the owner or occupant of the premises to which it is affixed or the name of such premises, upon or within one-quarter mile of any limit of a controlled-access highway;
- (e) construct, use or allow the use of any private road, entranceway or gate which, or any part of which, is connected with or opens upon a controlled-access highway;
- (f) sell, offer or expose for sale any vegetables, fruit or other produce, or any goods or merchandise upon or within 150 feet of any limit of a controlled-access highway, or upon or within 600 feet of any limit of a highway that intersects or runs into a controlled-access highway for a distance of 600 feet from any limit of the controlled-access highway.

Application
of subs. 1
in cities,
towns,
villages.

(2) The Minister in his discretion may order that subsection 1 or such clauses thereof as he may specify shall apply within the limits of any city, town or village or such parts thereof as he may specify, but otherwise subsection 1 shall not apply within the limits of any city, town or village. 1950, c. 24, s. 8, *part*.

Notice to
remove,
alter, etc.

(3) The Minister in his discretion may give notice to the owner or occupant of any land requiring him to remove or alter any building, structure, fence, tree, shrub, hedge, power line, pole line, other transmission line, gasoline pump, sign, notice or advertising device placed, erected or maintained after the 24th day of March, 1950, or to close up any private road, entranceway or gate constructed or maintained after that date that does not comply with subsection 1 or with any permit issued under this section with respect thereto.

Idem.

(4) The Minister in his discretion may give notice to the owner or occupant of any land requiring him to remove or alter any building, structure, fence, tree, shrub, hedge, power line, pole line, other transmission line, gasoline pump, sign, notice or advertising device placed or erected before the 24th day of March, 1950, or to close up any private road, entranceway or gate constructed before that date that would not comply with subsection 1 if it had been so placed, erected or constructed after that date. 1950, c. 24, s. 8, *part, amended*.

Notice to
be sent by
registered
mail.

(5) Every notice under subsection 3 or 4 shall be in writing and sent by registered mail addressed to the owner or occupant of the land, and it shall be deemed conclusively to have been received on the second day following the mailing thereof.

Failure to
obey notice.

(6) If the person to whom notice is given under subsection 3 or 4 fails to comply with it within thirty days after its receipt, the Minister may direct in writing any officer, employee or agent of the Department to enter upon the land and do or cause to be done whatever may be necessary to remove or alter the building, structure, fence, tree, shrub, hedge, power line, pole line, other transmission line, gasoline pump, sign, notice or advertising device, or to close up the private road, entranceway or gate, as the case may be, as the notice required.

Permits.

(7) The Minister in his discretion may issue permits under this section upon such conditions, in such form, for such term and upon the payment of such fee as he may deem proper, and may in his discretion cancel any such permit.

Delegation
of powers.

(8) The powers of the Minister to make orders, to give notices or to issue permits under this section may be delegated by him to the Deputy Minister, and when any such delegation has been made any such order, notice or permit duly made,

given or issued over the signature of the Deputy Minister shall be valid and effective for all purposes.

(9) Every person who violates any of the provisions of subsection 1 or who fails to comply with a notice given under subsection 3 or 4 shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$10 and not more than \$100 for a first offence and to a penalty of not less than \$50 and not more than \$500 for a second or subsequent offence, and the continuance of the condition constituting an offence for each week after conviction therefor shall constitute a new offence. 1950, c. 24, s. 8, *part*.

Offences and penalties.

(10) This section, except clauses *b*, *e* and *f* of subsection 1, shall apply *mutatis mutandis* to the other portions of the King's Highway. 1950, c. 29, s. 9, *part*.

Buildings, gas pumps and signs on the King's Highway.

94.—(1) The Minister may make regulations prohibiting or regulating the use of controlled-access highways by any type or class of vehicle.

Regulation of types of vehicles.

(2) Every person who violates any regulation made under this section shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$5 and not more than \$50. 1950, c. 24, s. 8, *part*.

Penalty.

PART IX

PROVISIONS APPLICABLE TO ALL HIGHWAYS

95. Any county council, commission or board may with respect to the roads under its jurisdiction pass by-laws,

Gas pumps and signs on local roads.

- (a) prohibiting or regulating the placing, erecting or altering of gasoline pumps upon or within 150 feet of any limit of any such road;
- (b) prohibiting or regulating the placing, erecting or altering of signs, notices or advertising devices upon or within one-quarter mile of any limit of any such road,

and any such by-law may provide for the issuing of permits for such gasoline pumps, signs, notices or advertising devices, as the case may be, and may prescribe the terms and form thereof and the fees to be paid therefor, and may prescribe penalties for violation of the by-law, but no such by-law shall

have effect until approved in writing by the Minister. 1950, c. 24, s. 9, *part.*

Authority of engineer or road superintendent with regard to drainage.

Rev. Stat., c. 105, 246.

96. The engineer or road superintendent appointed by any road authority under this Act may, without any direction from the Department or resolution of the council or commission by which he is appointed, initiate and carry out proceedings under *The Ditches and Watercourses Act* and may sign petitions under *The Municipal Drainage Act* for the purpose of procuring proper drainage for any road within the jurisdiction of the road authority, and the engineer or superintendent shall have authority to file or receive notices as owner in accordance with the procedure prescribed by the said Acts. R.S.O. 1937, c. 56, s. 81.

Obtaining gravel for road purposes.

Rev. Stat., c. 243.

97.—(1) Notwithstanding *The Municipal Act*, the engineer or road superintendent appointed by a county council or by any commission or by a township council may, without the passing of a by-law or resolution by the council, apply to the owner of any gravel land or gravel pit in the county for gravel for road purposes.

Application to state price offered.

(2) The engineer or road superintendent shall state in the application the price per cubic yard or per acre of such amount of gravel as he may require.

Application to county judge to fix price.

(3) If the owner does not, within three days after receiving the application, agree with the engineer or road superintendent to sell the gravel or the land and as to the price at which the same shall be sold, the engineer or road superintendent may, upon seven days notice in writing to the owner, apply to the county judge in the county in which the gravel or the land is situate, for an order fixing the price to be paid for the gravel or the land, and the judge upon such application and upon hearing such evidence as he deems necessary, may fix the price per cubic yard or per acre to be paid for the gravel or the land and may order and direct that upon the payment or tendering of the price so fixed, the engineer or road superintendent, by his servants or agents, may enter upon the lands of the owner and take the gravel so required.

Application of Rev. Stat., c. 189.

(4) *The Judges' Orders Enforcement Act* shall apply to every application and order made under subsection 3.

Appeal.

(5) An appeal shall lie from the order of the judge of the county court to the Court of Appeal, whose decision shall be final. R.S.O. 1937, c. 56, s. 82.

98.—(1) While the construction, repair or improvement of any highway to which this Act applies is in progress, the road superintendent, or any person authorized by him, may close the highway or any portion thereof to traffic for such time as he may deem necessary and subject to the provisions herein-after contained any person using a highway so closed shall do so at his own risk and shall not have a right to recover damages in case of accident or injury.

Power to close highways while undergoing construction or repairs.

(2) Upon so closing a highway it shall be the duty of the corporation or commission to provide and keep in repair a reasonable alternative route for through traffic and to provide a suitable by-road for all owners who cannot obtain access to their property by any other public road, and for the period during which the highway or portion thereof is closed the alternative route and by-road shall be under the jurisdiction of the council of the corporation or commission.

Alternative route to be provided.

(3) The engineer or road superintendent or the person authorized by him shall upon closing a highway or portion thereof protect the same by erecting or causing to be erected at each end of the highway so closed and where the alternative route deviates therefrom, a substantial barricade upon which shall be exposed and kept burning continuously from sunset until dawn, a red light, and at such points shall put up a detour sign indicating the alternative route and containing a notice of closing the highway for traffic.

Erection of barricades and detour signs.

(4) Every engineer, road superintendent and person authorized by him, who closes any highway or portion thereof to traffic and who neglects or fails to erect or maintain the barricade, light, notice or detour sign aforesaid while the highway is closed and every person who uses any highway so closed while the same is protected as aforesaid without authority from the engineer or road superintendent, or who removes or defaces any barricade, light, detour sign or notice, shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$10, and such person so wrongfully using the highway so closed shall also be liable for any damage or injury done to the highway occasioned by such trespass.

Penalties.

(5) This section shall apply to any highway as to which provision has been made under any special Act for the construction, maintenance and control thereof by a commission appointed by the Lieutenant-Governor in Council.

Application of section to special cases.

(6) Where the district engineer reports to the Department that a highway to which this Act applies in any municipality is out of repair, the Minister may, after at least two months notice in writing to the corporation of the municipality, direct

Repair and maintenance of highway by Department on corporation's default.

the Department to undertake the work of putting the highway in repair, and the cost of the work shall be chargeable to and shall be a debt due from the corporation of the municipality to the Crown and the Minister may direct that the cost shall be deducted from any sums of money payable to the municipality under this Act. R.S.O. 1937, c. 56, s. 83.

Excavated material from drains.

Rev. Stat., cc. 246, 105.

99. Notwithstanding any other Act, no earth, debris or excavated material from a drain constructed, improved or repaired under *The Municipal Drainage Act* or *The Ditches and Watercourses Act* or any other Act shall be deposited within the limits of any highway without express permission in writing so to do from the road authority responsible for the maintenance of the highway. R.S.O. 1937, c. 56, s. 84.

Local municipalities may construct sidewalks, etc.

100.—(1) The council of a local municipality may construct or put down a sidewalk or other improvement or service on a county road, the King's Highway or a road or highway under the control of a board, special commission, suburban road commission or other authority, but no such work shall be undertaken by a municipal corporation or any individual or company without first obtaining the written consent of the county council, Department of Highways, board, special commission, suburban road commission or other authority having control of the road or highway.

How cost provided.

(2) The cost of any sidewalk constructed on a county road, the King's Highway, or a road or highway under the control of a board, special commission or other authority, may be met out of the general funds of the local municipality, or out of funds of the authority having control of the road or highway, or the work may be undertaken as a local improvement to which *The Local Improvement Act* shall apply. R.S.O. 1937, c. 56, s. 85 (1, 2).

Rev. Stat., c. 215.

Local municipality to conform to requirements and be responsible for damages.

(3) A local municipality when constructing a sidewalk or other improvements or service on a road or highway under this section shall conform to any requirements or conditions imposed by the authority responsible for or having control of the road or highway, and shall be responsible for any injury or damage arising from the construction or presence of the sidewalk, improvements or service on the road or highway. R.S.O. 1937, c. 56, s. 85 (3); 1944, c. 23, s. 31 (1).

Construction of sidewalk or footpath.

(4) The council of a township may apply to the Department for authority to construct a sidewalk or footpath on the King's Highway or a county road and the Department may grant the authority, and upon completion of the work may approve thereof at its discretion, and upon the approval

being given the council may make application in the form prescribed by the Minister for, and the Minister may authorize the payment to the township out of the Fund of an amount not exceeding fifty per cent of the cost of the work. 1944, c. 23, s. 31 (2).

101. The council of any municipality or a suburban road commission may plant trees on any highway under its jurisdiction, and the cost of the work shall be deemed to be part of the cost of repairing and maintaining the highway. R.S.O. 1937, c. 56, s. 86. Planting trees.

102.—(1) The engineer or road superintendent appointed by a council or commission under this Act with the approval of the council or commission having jurisdiction over the highway may enter into an agreement with the owner of any land adjacent to a highway under the jurisdiction of the council for the removal of any tree, shrub, bush, hedge, fence, sign board, gasoline pump, building or other object growing or standing on the highway, or on land adjoining the highway and which may cause the drifting or accumulation of snow or may injuriously affect the highway or obstruct the vision of pedestrians or drivers of vehicles upon the highway. Agreement with owner for removal.

(2) The engineer or road superintendent may, with the approval of the council or commission having jurisdiction over the highway, enter into an agreement with the owner of the land as to the amount of compensation to be paid to the owner for damages caused to him by reason of such removal. Compensation.

(3) Where the engineer or road superintendent is of the opinion that any tree, shrub, brush, hedge, fence, sign board, gasoline pump, building or other object growing or standing upon a highway, or on land adjacent to the highway, will cause the drifting or accumulation of snow or is injurious to the roadbed or is a dangerous obstruction to the vision of pedestrians or drivers of vehicles on the highway, and he is unable to agree with the owner of the land for the removal of the same, or as to the amount of compensation to be paid therefor, the engineer or road superintendent may, with the approval of the council or commission having jurisdiction over the highway, apply to the judge of the county court of the county in which the land affected is situated, and upon such notice to the owner of the land affected as the judge may direct for an order granting authority to the engineer or road superintendent to enter upon the land affected and to remove any object with respect to which the application is made, and the judge, upon the application, may make such order and may fix the amount of compensation to be paid to the owner and Application to judge for order to remove.

give such directions as to costs as in his opinion may be equitable.

Application
of Rev.
Stat., c. 189.

(4) *The Judges' Orders Enforcement Act* shall apply to every application and order made under subsection 3.

By-laws for
clearing
adjacent
land.

(5) The council of a county or township may by by-law determine and fix the distance from the centre line of any highway within the jurisdiction of the council within which the owner of any lands adjacent to the highway shall not plant or cause to be planted any tree, shrub, bush or hedge, or erect or cause to be erected any fence, sign board, building or other structure which may cause the drifting or accumulation of snow or which may injuriously affect the roadbed of the highway or dangerously obstruct the vision of drivers of vehicles or pedestrians thereon. R.S.O. 1937, c. 56, s. 87.

Agreement
for widening
the King's
Highway,
county or
suburban
road in
township.

103.—(1) The council of a municipality which is not separated from the county, with the approval of the Minister, may make an agreement with the road authority having the control of a portion of the King's Highway, county highway or suburban road for the widening of the highway or road in the municipality and may make a further agreement with the road authority and any municipal corporation or commission interested in the highway or suburban road and with any municipal corporation, commission or company owning or operating a street railway or electric railway on the highway or road, fixing the proportions in which the cost of the widening and of the removal or replacing or altering of the tracks of such street railway or electric railway consequent upon the widening shall be borne by the municipality, the road authority, any municipal corporation or commission interested in the highway and by the municipal corporation, commission or company owning or operating the street railway or electric railway. R.S.O. 1937, c. 56, s. 88 (1).

Apportioning
cost.

(2) Where the municipality, the road authority and the municipal corporation, commission or company owning or operating a street railway or electric railway are unable to agree as to the proportion in which each of them shall so contribute the same shall be determined by the Ontario Municipal Board and the decision of the Board shall be final and conclusive and shall not be subject to any appeal. R.S.O. 1937, c. 56, s. 88 (2), 89.

By-law for
acquiring
land.

(3) Subject to the terms of the agreement entered into with the road authority for the widening of the highway, the municipality may pass by-laws for acquiring by purchase or otherwise, or for expropriating any land described in the agreement or necessary to carry out the provisions thereof, and *The Municipal Act* as to the acquiring, occupying or

Rev. Stat.,
c. 243.

taking of land for municipal purposes shall apply to the acquiring, occupying or taking of land under the by-law.

(4) Any county not being in control of the highway but through which the highway passes may agree to contribute to the cost of the widening of the highway, but nothing in this section shall be deemed to render it compulsory upon the county to so contribute. R.S.O. 1937, c. 56, s. 88. (3, 4). Voluntary contributions from municipalities.

104. A commission appointed under any statute of Ontario for the purpose of exercising or carrying out in any particular locality powers elsewhere exercisable by a municipal council with respect to the construction or improvement of roads shall have the like rights and powers and shall perform the like duties and be entitled to the same aid as the council of a township under this Act. R.S.O. 1937, c. 56, s. 90. Aid to commissions governing certain localities.

105. Where a subsidy is applied for by the council of any county, township or other road authority under this Act, vouchers covering all expenditures, in respect of which such subsidy is applied for, shall be furnished to the Department in a form satisfactory to the Minister. 1944, c. 23, s. 32. Vouchers.

CHAPTER 167

The Highway Traffic Act

1.—(1) In this Act,

Interpre-
tation.

(a) "built-up area" means the territory contiguous to a highway not within a city, town, village or police village where,

(i) not less than fifty per cent of the frontage upon one side of the highway for a distance of not less than 600 feet is occupied by dwellings or dwellings and buildings used for business purposes, or

(ii) not less than fifty per cent of the frontage upon both sides of the highway for a distance of not less than 300 feet is occupied by dwellings or dwellings and buildings used for business purposes,

and signs are displayed as required by the regulations; 1947, c. 45, s. 1, *part*.

(b) "chauffeur" means any person who operates a motor vehicle and receives compensation therefor;

(c) "commercial motor vehicle" means any motor vehicle having permanently attached thereto a truck or delivery body and includes ambulances, hearses, casket wagons, fire apparatus, police patrols, motor buses and tractors used for hauling purposes on the highways; R.S.O. 1937, c. 288, s. 1, cls. (a, b).

(d) "crosswalk" means,

(i) that part of a highway at an intersection which is included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs from the edges of the travelled portion of the highway, or

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by signs or by lines or other markings on the surface; 1950, c. 25, s. 1.

- (e) "Department" means Department of Highways; R.S.O. 1937, c. 288, s. 1, cl. (c).
- (f) "farm tractor" means a self-propelled vehicle designed and used primarily as a farm implement for drawing ploughs, mowing-machines and other implements of husbandry and not designed or used for carrying a load; 1949, c. 40, s. 1 (1), *part*.
- (g) "Fund" means the Unsatisfied Judgment Fund established under Part XIV; 1947, c. 45, s. 1, *part*.
- (h) "garage" means every place or premises where motor vehicles are received for housing, storage or repairs for compensation;
- (i) "gross weight" means the combined weight of vehicle and load;
- (j) "highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, designed and intended for, or used by, the general public for the passage of vehicles;
- (k) "intersection" means the area embraced within the prolongation or connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more highways which join one another at an angle, whether or not one highway crosses the other;
- (l) "Minister" means Minister of Highways; R.S.O. 1937, c. 288, s. 1, cls. (d-h).
- (m) "motor vehicle" includes automobile, motorcycle, and any other vehicle propelled or driven otherwise than by muscular power; but does not include the cars of electric or steam railways, or other motor vehicles running only upon rails, or a traction engine, farm tractor or road-building machine within the meaning of this Act; R.S.O. 1937, c. 288, s. 1, cl. (i); 1949, c. 40, s. 1 (2).
- (n) "official sign" means a sign approved by the Department;
- (o) "operator" means any person other than a chauffeur who operates a motor vehicle on a highway;
- (p) "peace officer" includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, justice of the

peace, jailer or keeper of a prison, and a police officer, constable, bailiff, or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process, or any officer appointed for enforcing or carrying out the provisions of this Act; R.S.O. 1937, c. 288, s. 1, cls. (j-l).

(q) "public vehicle" has the same meaning as in *The Rev. Stat., Public Vehicles Act*; 1948, c. 39, s. 1. c. 322.

(r) "Registrar" means Registrar of Motor Vehicles appointed under this Act; R.S.O. 1937, c. 288, s. 1, cl. (n).

(s) "regulations" means regulations made under this Act; 1947, c. 45, s. 1, *part*.

(t) "road-building machine" means a self-propelled vehicle designed and used primarily in connection with the building or maintaining of highways and not designed or used for carrying a load; 1949, c. 40, s. 1 (1), *part*.

(u) "safety glass" means any product composed of glass so manufactured, fabricated or treated as substantially to prevent shattering and flying of the glass when struck or broken, or such other or similar product as may be approved by the Department;

(v) "solid tires" means all tires other than pneumatic tires;

(w) "trailer" means any vehicle which is at any time drawn upon a highway by a motor vehicle, except an implement of husbandry temporarily drawn, propelled, or moved upon such highway, and except a side car attached to a motorcycle, and shall be considered a separate vehicle and not part of the motor vehicle by which it is drawn; R.S.O. 1937, c. 288, s. 1, cls. (o-q).

(x) "vehicle" includes motor vehicle, trailer, traction engine, farm tractor, road-building machine and any vehicle drawn, propelled, or driven by any kind of power, including muscular power, but not including the cars of electric or steam railways running only upon rails. R.S.O. 1937, c. 288, s. 1, cl. (r); 1949, c. 40, s. 1 (3).

Suspension
or cancella-
tion of
licence or
permit.

(2) Where in this Act the Minister or a magistrate or other official is authorized or directed to suspend or cancel the licence or permit of any person, and such person is the holder of both a licence and a permit issued under this Act, every such authority shall extend to both licence and permit and every such direction may in the discretion of the Minister, magistrate or other officer be made to apply to both licence and permit. 1938, c. 17, s. 2.

Lights.

(3) Where any light is required by any provision of this Act to be visible for a specified distance such requirement shall be deemed to apply during the times indicated in such provision upon level ground and under normal atmospheric conditions. 1939, c. 20, s. 1.

Registrar
of Motor
Vehicles.

2.—(1) There shall continue to be a Registrar of Motor Vehicles who shall be appointed by the Lieutenant-Governor in Council.

Duties.

(2) The Registrar shall act under the instructions of the Minister and shall have general supervision over all matters relating to highway traffic within Ontario, and shall perform such duties as are assigned to him by this Act, by the Lieutenant-Governor in Council, or by the Minister. R.S.O. 1937, c. 288, s. 2.

PART I

REGISTRATION AND PERMITS

Registra-
tion of
motor
vehicles.

3.—(1) The owner of every motor vehicle or trailer shall register the same with the Department before driving or operating or causing the same to be driven or operated upon a highway and shall pay to the Department a fee for the registration of such motor vehicle or trailer, and for the number plates therefor and, on failure to do so, shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days.

Permits for
vehicles.

(2) The Department shall issue for each motor vehicle or trailer so registered a numbered permit stating that the motor vehicle or trailer is registered in accordance with this Act, and shall cause the name of the owner, his address and the number of his permit, to be entered in a book to be kept for that purpose.

(3) The Minister may give authority to any person to issue permits for motor vehicles and may define the duties and powers of such person, and, where the salary is not otherwise provided, may authorize and fix the fee to be retained by the person so authorized for each permit issued. Local issuance of motor vehicle permits.

(4) Declarations or affidavits in connection with the issuance of permits and licences under this Act or required by the Department in that regard, may be taken before any person having authority to administer oaths or before any person specially authorized for that purpose by the Lieutenant-Governor in Council, but any person so specially authorized shall not charge any fee therefor. Administration of declarations and affidavits.

(5) The Lieutenant-Governor in Council may make regulations regarding the renewal and transfer of such permits, the payment of fees therefor, the amount and time of payment of such fees, and also the registration and operation of motor vehicles or trailers owned by manufacturers or dealers and not kept by them for private use. R.S.O. 1937, c. 288, s. 3. Regulations.

4.—(1) Any person who knowingly makes any false statement of fact in any application, declaration, affidavit or paper-writing required by this Act or by the regulations or by the Department in order to procure the issuance to him of a licence, permit or certificate of registration, in addition to any other penalty or punishment to which he may be liable, shall be liable for the first offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months. Penalty for false statement.

(2) Where an owner changes his address as given under subsection 2 of section 3, he shall within six days send by registered letter or cause to be filed in the Department his change of address, and every subsequent change of address, and on failure to do so shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200 and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months. Notice of change of address.

Where serial
number
obliterated.

(3) No permit shall be issued for a motor vehicle where the manufacturer's serial number or similar identifying mark has been obliterated or defaced, until the owner has filed with the Department satisfactory proof of the ownership of the vehicle, and, if known, the reason for the obliteration or defacement, and if satisfied as to the statements made, the Minister may grant permission to cut, impress, emboss, or attach permanently to the vehicle a special identification number or mark which thereafter shall be deemed sufficient for the purpose of registration of the vehicle. R.S.O. 1937, c. 288, s. 4.

Number
plate.

5.—(1) Every motor vehicle other than a motor bicycle, while being driven on a highway, shall have attached to and exposed on the front and back thereof, in a conspicuous position, a number plate furnished by the Department showing in plain figures the number of the permit issued for the current year.

Penalty.

(2) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months.

Position of
number
plate.

(3) The number plate on the front shall be as far forward and as high from the ground as may be necessary to render it distinctly visible, and the number plate on the back shall be so placed that the lower edge thereof shall not be lower than the body of the motor vehicle; provided that this subsection, so far as it relates to the position of the number plate on the back shall not apply to motor trucks or other motor vehicles for the delivery of goods.

Penalty.

(4) Any person who violates any of the provisions of subsection 3 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days.

Number
plate on
motor
bicycle.

(5) A motor bicycle while being driven on a highway shall have exposed on the front and back thereof a number plate furnished by the Department showing in plain figures, no.

than two inches in height, the number of the permit of such motor bicycle, and the number plate on the front shall show the number of the permit issued for the current year on both sides and shall be fixed so that the number is plainly visible from either side of the motor bicycle.

(6) Every trailer while being drawn on a highway shall have exposed on the back thereof, in a conspicuous position, a number plate furnished by the Department showing in plain figures the number of the permit issued for the current year. Rear number plate on trailer.

(7) Any person who violates any of the provisions of sub-section 5 or 6 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. Penalty.
R.S.O. 1937, c. 288, s. 5.

6.—(1) Any person who,

- (a) defaces or alters any number plate furnished by the Department;
- (b) uses or permits the use of a defaced or altered number plate or a number plate issued by the Department for another motor vehicle or trailer;
- (c) without the authority of the owner removes a number plate from a motor vehicle or trailer;
- (d) uses or permits the use of any number plate upon a motor vehicle or trailer except the one issued by the Department for the motor vehicle or trailer; or
- (e) does not, within six days, forward a notice on the prescribed form to the Department of the sale or purchase by or to him of a motor vehicle or trailer for which a permit has been issued,

Violations
as to
number
plates.

shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200 and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a term of not more than six months. R.S.O. 1937, c. 288, s. 6 (1); 1938, c. 17, s. 3.

Number plates to be property of Crown.

(2) Every number plate furnished by the Department under this Act shall be and remain the property of the Crown and shall be returned to the Department whenever required by the Department, and any person failing to so return the number plate without reasonable excuse shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25, and in addition his licence or permit may be suspended for a period of not more than thirty days, and the Minister may also for such failure refuse to issue a licence or permit to such person. R.S.O. 1937, c. 288, s. 6 (2).

No other numbers to be exposed.

7.—(1) No number other than that upon the number plate furnished by the Department shall be exposed on any part of a motor vehicle or trailer in such a position or manner as to confuse the identity of the number plate.

Penalty.

(2) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25, and in addition his licence or permit may be suspended for a period of not more than thirty days.

Numbers to be kept clean.

(3) The number plates shall be kept free from dirt and obstruction and shall be so affixed that the numbers thereon may be at all times plainly visible, and the view thereof shall not be obscured or obstructed by spare tires, bumper bars, or by any part of the motor vehicle or trailer or attachments thereto, or by the load carried.

Penalty.

(4) Any person who violates any of the provisions of subsection 3 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 7.

Improper number plates.

8. A peace officer who has reason to believe that a motor vehicle or trailer is carrying number plates which were not issued for it, or which although issued for it were obtained by false pretenses, may take possession of such number plates and retain them until the facts as to the carrying of such number plates have been determined. R.S.O. 1937, c. 288, s. 8.

9.—(1) Sections 3 and 5 and subsection 1 of section 7 shall not apply to a motor vehicle owned by a person who does not reside or carry on business in Ontario for more than six consecutive months in each year, if the owner thereof is a resident of some other province of Canada, and has complied with the provisions of the law of the province in which he resides as to registration of a motor vehicle and the display of the registration number thereon, and provided the province of residence grants similar exemptions and privileges with respect to motor vehicles registered under the laws of and owned by residents of Ontario. R.S.O. 1937, c. 288, s. 9 (1); 1940, c. 9, s. 1 (1). Exceptions as to residents of other provinces.

(2) Sections 3 and 5 and subsection 1 of section 7 shall not apply to a motor vehicle owned by a person who does not reside or carry on business in Ontario for more than three months in any one year if the owner thereof is a resident of a country or state which grants similar exemptions and privileges with respect to motor vehicles registered under the laws of and owned by residents of Ontario and has complied with the provisions of the law of the country or state in which he resides as to registration of a motor vehicle and the display of registration plates thereon; provided, however, that this subsection shall not apply to commercial motor vehicles. 1938, c. 17, s. 4; 1940, c. 9, s. 1 (2). Exceptions as to residents of foreign countries.

(3) The Lieutenant-Governor in Council may make regulations providing for the temporary exemption from registration of commercial vehicles or vehicles used by non-residents doing business in Ontario. R.S.O. 1937, c. 288, s. 9 (3). Regulations.

PART II

REQUIREMENTS AS TO EQUIPMENT

10.—(1) Whenever on a highway after dusk and before dawn, every motor vehicle shall carry three lighted lamps in a conspicuous position, one on each side of the front which shall cast a white, green or amber coloured light only, and one on the back of the vehicle which shall cast from its face a red light only, except in the case of a motor bicycle without a side car, which shall carry one lamp on the front which shall cast a white light only and one on the back of the vehicle which shall cast from its face a red light only, and any lamp so used shall be clearly visible at a distance of at least 200 feet from the front or rear, as the case may be. Lamps.

(2) Lamps on the front of a motor vehicle shall be so constructed, located, arranged and adjusted that when lighted as required by subsection 1 they produce under normal atmo- Driving lights.

spheric conditions and on a level road a driving light sufficient to render clearly discernible to the operator of the motor vehicle any person or vehicle on the highway within a distance of 200 hundred feet ahead of the motor vehicle. R.S.O. 1937, c. 288, s. 10 (1, 2).

Lighted
streets.

(3) Subsection 2 shall not apply to a motor vehicle parked on a highway and subsections 1, 5, 6 and 7 shall not apply to a motor vehicle parked on a highway upon which the speed limit is not greater than 30 miles per hour and which is so lighted by the means of any system of street or highway lighting that under normal atmospheric conditions the vehicle is clearly discernible within a distance of 200 feet. 1943, c. 10, s. 1; 1946, c. 39, s. 1 (1).

Strength of
front lamps.

(4) No motor vehicle shall carry on the front thereof more than four lighted lamps of over four candle-power. R.S.O. 1937, c. 288, s. 10 (4); 1939, c. 20, s. 2 (1); 1949, c. 40, s. 2 (1).

Clearance
lamps
required
on wide
vehicles.

(5) Whenever on a highway after dusk and before dawn every motor vehicle and every trailer having a width at any part in excess of 80 inches shall carry in addition to the lamps required by subsection 1, two clearance lamps, one of which shall be located at the front of the vehicle and shall display a green light, and the other of which shall be located at the rear of the vehicle and shall display a red light, and the Department may by regulation permit a reflector, approved by the Department, to be displayed in lieu of a clearance lamp on the rear of a vehicle, and any lamp or reflector so used shall be clearly visible at a distance of at least 200 feet from the front or rear as the case may be, and shall be affixed within six inches of the extreme left side of the vehicle. R.S.O. 1937, c. 288, s. 10 (5).

Identifica-
tion lamps.

(6) Whenever on a highway outside a city, town or village after dusk and before dawn every motor vehicle or combination of vehicles having a length in excess of 30 feet or a width in excess of 80 inches shall carry three lamps displaying green, but in the case of a public vehicle amber, lights at the front and three lamps displaying red lights at the rear and the lights of each colour shall be evenly placed not less than six nor more than twelve inches apart along a horizontal line as near the top of the vehicle or combination of vehicles as the permanent structure of the vehicle permits and shall be visible for distances of 500 feet from the front and rear respectively of the vehicle or combination of vehicles. 1939, c. 20, s. 2 (2), *part*; 1940, c. 9, s. 2; 1949, c. 40, s. 2 (2).

Side marker
lamps.

(7) Whenever on a highway outside a city, town or village after dusk and before dawn every motor vehicle or combination of vehicles having a length in excess of 20 feet shall carry not

less than four side marker lamps, one of which shall be located on each side of the vehicle or combination of vehicles near the front and shall display a green light and one of which shall be located on each side of the vehicle or combination of vehicles near the rear and shall display a red light and each of which lights shall be visible for a distance of 500 feet from the side of the vehicle or combination of vehicles upon which it is located; provided that a vehicle or combination of vehicles may carry four reflectors approved by the Department in lieu of the side marker lamps required by this section; and provided further that if the clearance lamps upon the left side of any vehicle or combination of vehicles display lights visible for a distance of 500 feet from the left side of the vehicle or combination of vehicles, it shall not be necessary to carry side marker lamps as required by this subsection on the left side of the vehicle. 1939, c. 20, s. 2 (2), *part*; 1940, c. 9, s. 2.

(8) Any person who violates any of the provisions of sub-Penalty. section 1, 2, 4 or 5 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 10 (6).

(9) In the case of an ambulance, fire or police department vehicle or public utility emergency vehicle the lamps on the front may cast a red light only or such other colour of light as may be designated by a by-law of the municipality in which the vehicle is operated, approved by the Department, but no other motor vehicle shall carry on the front thereof any lamp which casts a red light. 1946, c. 39, s. 1 (2). Red light
in front.

(10) Whenever on a highway after dusk and before dawn, every bicycle or tricycle shall carry on the front thereof a white or amber lighted lamp, or reflector approved by the Department, and on the back thereof a red lighted lamp, or reflector approved by the Department, as well as a white surface not less than ten inches in length and two inches in width, all of which shall be so placed as to be clearly visible to the drivers of other vehicles. Bicycles
and
tricycles,
lights on.

(11) Any person who violates any of the provisions of sub-Penalty. section 10 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25. R.S.O. 1937, c. 288, s. 10 (8, 9).

Rear lamps
to illumin-
ate number
plate.

(12) The lamp on the back of a motor vehicle or trailer shall be of at least three candle-power and shall be so placed that it will illuminate at all times between dusk and dawn the numbers on the number plate, or if provision is made on the number plate or on any attachment furnished or required by the Department for affixing such lamp, it shall be affixed in the position or space provided, and such lamp shall face to the rear and reflect on the number plate a white light only. R.S.O. 1937, c. 288, s. 10 (10); 1938, c. 17, s. 5.

Penalty.

(13) Any person who violates any of the provisions of subsection 12 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 10 (11).

Parking
lights.

(14) A motor vehicle, other than a commercial motor vehicle, while standing upon any highway at such times as lights are required by this section for the vehicle may, in lieu of the lighting equipment specified in this section, show one light carried on the left side of the car in such a manner as to be clearly visible to the front and rear for a distance of at least 200 feet and to show white to the front and red to the rear of the vehicle; provided, however, that such light shall not be displayed while the motor vehicle is in motion. R.S.O. 1937, c. 288, s. 10 (12); 1949, c. 40, s. 2 (3).

Regulations
as to lights.

(15) The Lieutenant-Governor in Council may make regulations prescribing the type and maximum strength of lights which shall be carried by vehicles, and regulating the location, direction, focus and use of such lights. 1939, c. 20, s. 2 (3).

Penalty.

(16) Any person who violates any of the provisions of subsection 14 or of the regulations made under subsection 15 shall be liable for the first offence to a penalty of not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 10 (15); 1939, c. 20, s. 2 (4).

Spotlamps.

(17) No motor vehicle shall be equipped with more than one spotlight and every lighted spotlight shall be so directed, upon approaching or upon the approach of another vehicle, that no part of the high intensity portion of the beam from

such lamp will be directed to the left of the prolongation of the extreme left side, nor more than 100 feet ahead, of the vehicle to which it is attached. 1949, c. 40, s. 2 (4).

(18) Any person who violates any of the provisions of subsection 17 shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months. ^{Penalty.}

(19) Every traction engine shall, after dusk and before dawn, carry a lamp in a conspicuous place in front which shall cast a white or green light only and one on the rear of the engine or of any vehicle which may be attached to it which shall cast from its face a red light only. ^{Lamps to be carried on engine.}

(20) Whenever on a highway after dusk and before dawn, every trailer shall carry on the back thereof one lighted lamp which shall cast from its face a red light only. ^{Light on back of trailer.}

(21) Any person who violates any of the provisions of subsection 19 or 20 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. ^{Penalty.}

(22) Subject to subsection 23, every vehicle other than a motor vehicle or a bicycle or a tricycle, when on a highway after dusk and before dawn, shall carry in a conspicuous position on the left side thereof a lighted lamp showing white to the front and red to the rear, and any lamp so used shall be clearly visible at a distance of at least 200 feet from the front and from the rear of the vehicle. ^{Lights on all vehicles.}

(23) The Department may by regulation permit a reflector approved by the Department to be displayed in lieu of a lighted lamp on vehicles commonly used for conveying flammable materials or vehicles which are structurally unsuitable for carrying lighted lamps. ^{Reflectors in certain cases.}

(24) Any person who violates any of the provisions of sections 22 and 23 shall be liable for the first offence to a ^{Penalty.}

penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25. R.S.O. 1937, c. 288, s. 10 (17-22).

Vehicles
with right
hand drive.

11. Every vehicle which is equipped with a right hand drive shall, unless it is equipped with a mechanical or electrical signal device which has been approved by the Department, have prominently displayed on the rear thereof in bold face letters of not less than two inches in height and of a colour which is in contrast to that of the vehicle, the words,

"RIGHT HAND DRIVE VEHICLE".

1946, c. 39, s. 2; 1949, c. 40, s. 3.

Brakes, two
systems
required.

12.—(1) Every motor vehicle other than a motorcycle, when operated upon a highway shall be equipped with brakes adequate to stop and to hold the vehicle, having two separate means of application, each of which means shall apply a brake or brakes effective on at least two wheels and each of which shall suffice to stop the vehicle within a proper distance, and each means of application shall be so constructed that the cutting in two of any one element of the operating mechanism shall not leave the motor vehicle without brakes effective on at least two wheels.

Motorcycle.

(2) Every motorcycle shall be equipped with at least one brake.

Trailer or
semi-trailer.

(3) Every trailer or semi-trailer having a gross weight of 3,000 pounds or more shall be equipped with brakes adequate to stop and to hold the vehicle.

Condition
of brakes.

(4) All such brakes shall be maintained in good working order and shall conform to regulations not inconsistent with this section to be made by the Department.

Inspection.

(5) Any constable or any officer appointed for carrying out the provisions of this Act may at any time inspect or cause an inspection to be made of the brakes on any motor vehicle on the highway, and may, if the brakes do not conform to the regulations of the Department, require the driver of the motor vehicle to proceed forthwith to make or have such brakes made to comply with such regulations.

Penalty.

(6) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in

addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months. R.S.O. 1937, c. 288, s. 11.

13.—(1) Every motor vehicle other than a motorcycle ^{Equipment.} shall be equipped with,

- (a) a device for cleaning rain, snow and other moisture ^{windshield} from the windshield so constructed as to be controlled ^{wiper;} or operated by the chauffeur or operator;
- (b) a mirror securely attached to the vehicle and placed ^{mirror;} in such a position as to afford the chauffeur or operator a clearly reflected view of the roadway in the rear, or of any vehicle approaching from the rear. R.S.O. 1937, c. 288, s. 12 (1).

(2) Every motor vehicle and every trailer shall be equipped ^{mudguards.} with mudguards or fenders adequate to reduce effectively the wheel spray or splash of water from the roadway to the rear thereof, unless adequate protection is afforded by the body of the motor vehicle or trailer or by a trailer drawn by the motor vehicle. 1949, c. 40, s. 4 (1).

(3) Subsection 2 shall not apply to motor vehicles or ^{Exception.} trailers in an unfinished condition while proceeding to a works for completion. 1950, c. 25, s. 2.

(4) Any person who violates any of the provisions of sub- ^{Penalty.} section 1 or 2 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25, and in addition his licence or permit may be suspended for a period of not more than thirty days. R.S.O. 1937, c. 288, s. 12 (2); 1949, c. 40, s. 4 (2).

14.—(1) All self-propelled vehicles other than traction ^{Require-} engines, and all trailers having a gross weight in excess of ^{ments as} two tons, shall be equipped with rubber tires or tires of some ^{to tires.} composition equally resilient, and a vehicle shall not be operated on any highway with a tire that is broken or defective in such a manner as to cause additional impact or pounding on or cutting of the highway, and in the case of motor vehicles and trailers equipped with solid rubber tires there shall be at least

one and one-quarter inches of rubber between the wheel rim and the roadway.

Flanges and
clamps.

(2) No vehicle shall be operated or object moved over or upon any highway with any flange, rib, clamp or other device attached to its wheels, or made a part thereof, which will injure the highway.

Lock-shoes.

(3) No person driving a vehicle drawn by a horse or other animal and used for carrying articles of burden, goods, wares or merchandise shall when descending a grade on a highway lock any wheel of such vehicle except with the device commonly known as a lock-shoe.

Penalty.

(4) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 13.

Interpre-
tation.

15.—(1) In this section, "rebuild" means to make or impose a new tread or new surface or to otherwise alter the surface of a used tire so that it will resemble a new tire, by cutting into or adding rubber to the surface thereof, or by a combination of both.

Rebuilt tires
to be
marked.

(2) No person shall rebuild any tire designed for use upon a motor vehicle unless he causes it to be indicated in letters of not less than one-half inch in height, clearly embossed upon or imposed or cut into the outside surface of each wall of the tire, that it has been rebuilt.

Idem.

(3) No person shall sell, offer or expose for sale, or have in his possession with intent to sell any tire designed for use upon a motor vehicle which has been rebuilt unless it is indicated in letters of not less than one-half inch in height, clearly embossed upon or imposed or cut into the outside surface of each wall of the tire, that it has been rebuilt.

Penalty.

(4) Any person who violates the provisions of subsection 2 or 3 shall be liable for the first offence to a penalty of not more than \$25; for a second offence to a penalty of not more than \$50; and for any subsequent offence to a penalty of not more than \$100. 1941, c. 22, s. 2.

16.—(1) No person shall sell any new motor vehicle nor shall any new motor vehicle be registered with the Department unless such vehicle is equipped with safety glass wherever glass is used in doors, windows and windshields. R.S.O. 1937, c. 288, s. 14. Motor vehicles to be equipped with safety glass.

(2) No person shall install glass other than safety glass in the door, window or windshield of any motor vehicle. 1938, c. 17, s. 6 (1). Safety glass.

17.—(1) Every motor vehicle shall be equipped with a noise muffler, and no contrivance for releasing such muffler shall be attached to the motor vehicle so that it may be operated from any seat in the vehicle. Noise muffler.

(2) A person having the control or charge of a motor vehicle shall not sound any bell, horn or other signalling device so as to make an unreasonable noise, and an operator or chauffeur of any motor vehicle shall not permit any unreasonable amount of smoke to escape from the motor vehicle, nor shall such operator or chauffeur at any time, by cutting out the muffler or otherwise, cause the motor vehicle to make any unnecessary noise, provided that this subsection shall not apply to a motor vehicle of a municipal fire department while proceeding to a fire or answering a fire alarm call. Unnecessary noise.

(3) Every motor vehicle, bicycle and tricycle shall be equipped with an alarm bell, gong or horn, which shall be kept in good working order and sounded whenever it is reasonably necessary to notify pedestrians or others of its approach. R.S.O. 1937, c. 288, s. 15 (1-3). Alarm bell to be sounded.

(4) No vehicle other than an ambulance, fire or police department vehicle, public utility emergency vehicle or vehicle operated by the Department shall be equipped with a siren horn or a device producing a sound which so nearly resembles that produced by a siren horn as to deceive or confuse. R.S.O. 1937, c. 288, s. 15 (4); 1939, c. 20, s. 3. Prohibition as to use of siren horn.

(5) Any person who violates any of the provisions of sub-section 1, 2, 3 or 4 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25, and in addition his licence or permit may be suspended for a period of not more than thirty days. R.S.O. 1937, c. 288, s. 15 (5). Penalty.

Sleigh bells.

18.—(1) Every person travelling upon a highway with a sleigh or sled drawn by a horse or other animal, shall have at least two bells attached to the harness or to the sleigh or sled in such a manner as to give ample warning sound.

Penalty.

(2) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25. R.S.O. 1937, c. 288, s. 16.

Width of vehicle.

19.—(1) No vehicle, including load or contents, shall have a greater width than 96 inches, except traction engines or threshing machines which may have a total width of 110 inches, and except loads of loose fodder. R.S.O. 1937, c. 288, s. 17 (1).

Length of vehicle or combination of vehicles.

(2) No vehicle, other than a public vehicle or a semi-trailer as defined in clause *b* of subsection 6 of section 37, including load or contents, shall exceed the length of 33 feet and no combination of vehicles, including load or contents, coupled together shall exceed the total length of 50 feet. 1950, c. 25, s. 3.

Length of public vehicle.

(3) No public vehicle, including load or contents, shall exceed the length of 35 feet. 1940, c. 9, s. 3 (2).

Trailers.

(4) No trailer or other object or device shall be drawn by a motor vehicle on a highway unless the trailer, object or device has two separate means of attachment so constructed and attached that the failure of one such means will not permit the trailer, object or device to become detached; but this subsection shall not apply to a trailer so designed and used that part of its own weight and of its own load rests upon or is carried by another vehicle. 1949, c. 40, s. 5.

Penalty.

(5) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50. R.S.O. 1937, c. 288, s. 17 (4).

Examination of vehicle.

20.—(1) Every constable and every officer appointed for the purpose of carrying out the provisions of this Act may require the driver of any motor vehicle to submit such motor vehicle, together with its equipment and any trailer attached thereto, to such examination and tests as the constable or officer may deem expedient.

(2) Where any such vehicle, equipment or trailer is found to be in a dangerous or unsafe condition the constable or officer making the examination or tests may require the driver of the vehicle to proceed to have the vehicle, equipment or trailer placed in a safe condition and may order the vehicle or trailer to be removed from the highway and may prohibit the operation of the vehicle or trailer on the highway until the vehicle, equipment or trailer has been placed in a safe condition. R.S.O. 1937, c. 288, s. 18.

Use of
unsafe
vehicle
prohibited.

PART III

CHAUFFEURS' LICENCES

21.—(1) No person shall operate or drive a motor vehicle on a highway as a chauffeur unless he is licensed so to do, and no person shall employ anyone to drive a motor vehicle who is not a licensed chauffeur.

Licences for
paid drivers.

(2) Any person who violates any of the provisions of sub-section 1 shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200 and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months.

Penalty.

(3) Chauffeurs' licences may be issued by the Minister to such persons for such time and upon such terms and subject to such regulations and restrictions as the Lieutenant-Governor in Council may prescribe.

Terms of
licence.

(4) A licence shall not be issued to a chauffeur unless he files with the Department certificates that he is a fit and proper person to be so licensed, having regard to his character, physical fitness, ability to drive and knowledge of the rules of the road, and one of such certificates touching the applicant's character shall be furnished by the clerk, chief constable or magistrate of the municipality in which the applicant resides, and one other certificate touching the applicant's physical fitness, ability to drive and knowledge of the rules of the road shall be furnished by an examiner appointed for that purpose by the Lieutenant-Governor in Council and residing in the municipality in which the applicant resides.

Certificate
from
examiner
and chief
constable
of municipi-
pality.

Where no
examiner in
municipality.

(5) If there is no such examiner residing in the municipality, the certificate may be signed by the examiner residing in the municipality nearest to that in which the applicant resides.

Examination.

(6) Before a person is appointed an examiner he shall pass such an examination or furnish such evidence of his qualifications as the Minister shall require. R.S.O. 1937, c. 288, s. 19.

When
chauffeur
may be dis-
qualified.

22. A magistrate or justice of the peace by whom a person is convicted of a violation of this Act, if the person convicted is required to hold a chauffeur's licence and does not hold such licence, may declare him disqualified to hold such a licence for such time as the magistrate or justice of the peace thinks fit and shall so report with the certificate of the conviction to the Minister. R.S.O. 1937, c. 288, s. 20.

Production
of licence.

23.—(1) A licence must be produced by any person driving a motor vehicle as a chauffeur when demanded by a constable or by an officer appointed for carrying out the provisions of this Act.

Penalty.

(2) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25, and in addition his licence or permit may be suspended for a period of not more than thirty days.

Production
of licence.

(3) A person convicted of an offence under this Act if he holds a chauffeur's licence shall forthwith produce the licence for the purpose of endorsement.

Penalty.

(4) Any person who violates any of the provisions of subsection 3 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 21.

Endorse-
ment of
conviction
on licence
or permit.

24.—(1) Magistrates or justices of the peace by whom a person is convicted of a violation of this Act shall cause particulars of the conviction to be endorsed upon the chauffeur's licence or operator's licence, as the case may be, and if the penalty imposed includes the suspension of the licence or permit, shall take and hold for the period of the suspension such licence or permit and any badge issued therewith.

(2) Any such endorsement signed by the convicting justice shall be *prima facie* evidence of such conviction. R.S.O. 1937, c. 288, s. 22. Endorsement to be *prima facie* evidence.

25.—(1) The Minister may at any time for misconduct or violation of the provisions of this Act or *The Public Vehicles Act* or of any regulation thereunder by an owner, operator or chauffeur of a motor vehicle or for any reason which he may deem sufficient, suspend or cancel any permit or licence, and no further or other licence or permit shall be issued to such owner, operator or chauffeur during such suspension, or in the case of a cancellation, until the Minister approves, and the Minister may also for such misconduct or violation or reason prohibit any person from driving a motor vehicle for such period as he may deem advisable and any such person who drives a motor vehicle during the prohibited period shall be liable to a penalty of not more than \$500. R.S.O. 1937, c. 288, s. 23 (1); 1943, c. 10, s. 2; 1947, c. 45, s. 2. Power to cancel permit or licence and to prohibit driving.
Rev. Stat., c. 322.

(2) Every person whose permit has been suspended or cancelled and who, while prohibited from having a motor vehicle registered in his name, applies for or procures the issue to him or has in his possession a permit issued to him, shall be guilty of an offence and liable to a penalty of not less than \$25 and not more than \$100 and to imprisonment for a term of not more than thirty days, and in addition the motor vehicle for which the permit was issued shall be forfeited to His Majesty in right of Ontario. Unlawful possession of permit.

(3) Every person whose licence has been suspended or cancelled and who, while prohibited from driving a motor vehicle, applies for or procures the issue to him or has in his possession a licence, shall be guilty of an offence and liable to a penalty of not less than \$25 and not more than \$100 and to imprisonment for a term of not more than thirty days. 1948, c. 39, s. 2. Unlawful possession of licence.

PART IV

GARAGE AND STORAGE LICENCES

26.—(1) No person shall store or deal in motor vehicles, or conduct what is known as a garage business, parking station, parking lot or used car lot, without having been licensed so to do by the Department in respect of each separate premises used by him for the purpose of such business, provided that this section shall not apply to a temporary parking lot which is being operated for a period of not more than two consecutive weeks. Garage and storage licences.

Fee.

(2) The fee for the licence shall be such as may be fixed from time to time by order of the Lieutenant-Governor in Council on the recommendation of the Minister.

Penalty for conducting business without licence.

(3) Every person who stores or deals in motor vehicles or conducts a garage business, parking station, parking lot or used car lot without a licence shall for the first offence be liable to a penalty of not less than \$10 and not more than \$50; for the second or any subsequent offence, to a penalty of not less than \$50 and not more than \$200, and for the third or any subsequent offence shall also be liable to imprisonment for a term of not more than three months. R.S.O. 1937, c. 288, s. 24 (1-3).

Right of entry and inspection.

(4) Any peace officer may enter into any place where motor vehicles or bicycles are stored or dealt in, or into any garage, parking station, parking lot or used car lot required to be licensed and make such investigation and inspection as he thinks proper. R.S.O. 1937, c. 288, s. 24 (4); 1941, c. 22, s. 3.

Penalty for interference.

(5) Any person who obstructs, molests or interferes with any such constable or officer in the performance of his duty under subsection 4 shall be liable for the first offence to a penalty of not less than \$25 and not more than \$100; for the second offence to a penalty of not less than \$100 and not more than \$300; and for any subsequent offence shall be liable to a penalty of not less than \$300 and not more than \$500 and shall also be liable to imprisonment for a term of not more than six months.

Minister may suspend or cancel licence.

(6) The Minister may suspend or cancel the licence issued for a garage business, parking station, parking lot or used car lot for misconduct or for non-compliance with or infraction of any of the provisions of this Act or of the regulations by the holder of such licence or by any of his employees or for any other reason appearing to him to be sufficient.

Regulations.

(7) The Lieutenant-Governor in Council, upon the recommendation of the Minister, may make regulations controlling and governing the conduct of a garage business, parking station, parking lot or used car lot. R.S.O. 1937, c. 288, s. 24 (5-7).

Record of second-hand vehicles bought, sold, etc.

27.—(1) All persons who buy, sell, wreck or otherwise deal in second-hand motor vehicles or bicycles shall keep a correct record of all motor vehicles and bicycles bought, sold or wrecked and of such information as will enable such motor vehicles and bicycles to be readily identified, and shall transmit within six days to the Department, on forms furnished by the Department, a statement of each motor vehicle bought, sold or wrecked by them and such information with reference

thereto as may be required by the Department. R.S.O. 1937, c. 288, s. 25 (1); 1941, c. 22, s. 4 (1).

(2) No person shall buy, sell, wreck or otherwise deal with any motor vehicle or bicycle where the manufacturer's serial number or similar identifying mark has been obliterated or defaced or is not readily recognizable. R.S.O. 1937, c. 288, s. 25 (2); 1941, c. 22, s. 4 (2). Prohibition as to buying where number obliterated.

(3) No person shall deface or remove the manufacturer's serial number or identifying mark from a motor vehicle or from the engine thereof or from a bicycle. R.S.O. 1937, c. 288, s. 25 (3); 1941, c. 22, s. 4 (3). Defacing serial number.

(4) Where any motor vehicle is placed in the possession of a person who repairs, buys, sells, wrecks or stores motor vehicles or conducts what is known as a garage business, parking station, parking lot or used car lot and the same remains in his possession for more than two weeks without good reason, such person shall forthwith, upon the expiration of the said period of two weeks, make a report thereof to the Department. Report to Department as to cars stored or parked.

(5) If a motor vehicle which shows evidence of having been involved in a serious accident or having been struck by a bullet is brought into a garage, parking station, parking lot, used car lot or repair shop, the person in charge of the garage, parking station, parking lot, used car lot or repair shop shall forthwith report the same to the nearest provincial or municipal police officer, giving the name and address of the owner or operator and also the permit number and a description of the vehicle. Report as to damaged or bullet-marked cars.

(6) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100; and for any subsequent offence to a penalty of not less than \$50 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days. R.S.O. 1937, c. 288, s. 25 (4-6). Penalty.

PART V

RATE OF SPEED

28.—(1) No motor vehicle shall be operated at a greater rate of speed than, Rate of speed,

(a) fifty miles per hour,

(i) upon a highway not within a city, town, village, police village or built-up area, or

Rev. Stat.,
c. 166.

- (ii) upon a highway designated by the Lieutenant-Governor in Council as a controlled-access highway under *The Highway Improvement Act*, whether or not such highway is within a city, town, village, police village or built-up area;
- (b) subject to clause *a*, thirty miles per hour upon a highway within a city, town, village, police village or built-up area;
- (c) twenty miles per hour over a level railway crossing; or
- (d) fifteen miles per hour if equipped wholly or in part with solid tires.

in public
parks;

(2) The council of any city, town or village may by by-law prescribe a lower speed limit for motor vehicles when operated in any public park or exhibition ground but such lower speed limit shall not be less than fifteen miles per hour.

fire
department
vehicles.

(3) Subsections 1 and 2 shall not apply to a motor vehicle of a municipal fire department while proceeding to a fire or answering a fire alarm call.

Penalty.

(4) Any person who violates any of the provisions of this section or any by-law passed under this section shall be guilty of an offence and shall be liable for the first offence to a penalty of not less than \$5 and not more than \$50; for the second offence to a penalty of not less than \$10 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than three months; and for any subsequent offence shall be liable to a penalty of not less than \$20 and not more than \$200, and in addition his licence or permit may be suspended for a period of not more than six months. 1947, c. 45, s. 3.

Careless
driving.

29.—(1) Every person who drives a vehicle on a highway without due care and attention or without reasonable consideration for other persons using the highway shall be guilty of an offence and shall be liable to a penalty of not less than \$5 and not more than \$100, or to imprisonment for a term of not more than one month, and in addition his licence or permit may be suspended for a period of not more than six months. 1947, c. 45, s. 4.

Crowding
driver's
seat.

(2) Driving a motor vehicle with persons or property in the front or driver's seat so placed as to interfere with the proper management or control of the vehicle by the driver, shall be deemed to be driving without due care and attention within the meaning of this section. 1939, c. 20, s. 6, *part*.

30.—(1) No person shall drive a motor vehicle upon a highway in a race or on a bet or wager. Racing.

(2) Any person who violates any of the provisions of sub-section 1 shall be liable for the first offence to a penalty of not less than \$25 and not more than \$100, and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than sixty days; and for any subsequent offence shall be liable to a penalty of not less than \$100 and not more than \$500, and shall also be liable to imprisonment for a term of not more than six months, and in addition his licence or permit may be suspended for a period of not more than one year. Penalty. R.S.O. 1937, c. 288, s. 28.

31.—(1) The municipal corporation or other authority having jurisdiction over the highway, and in the case of a provincial highway or a highway in territory without municipal organization the Lieutenant-Governor in Council, may make regulations limiting any vehicle passing over a bridge to a speed of not less than five miles per hour, and notice of the limit of speed fixed by such regulation, legibly printed, shall be posted up in a conspicuous place at each end of the bridge. Regulations limiting speed on bridges. R.S.O. 1937, c. 288, s. 30 (1); 1947, c. 45, s. 6.

(2) A person who injures or interferes with such notice shall be liable to a penalty of not less than \$1 and not more than \$10. Penalty for defacing. R.S.O. 1937, c. 288, s. 30 (2).

32.—(1) No motor vehicle shall be driven upon a highway at such a slow rate of speed as to impede or block the normal and reasonable movement of traffic thereon except when such slow rate of speed is necessary for safe operation having regard to all the circumstances. Unnecessary slow driving prohibited. R.S.O. 1937, c. 288, s. 31 (1); 1947, c. 45, s. 7.

(2) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$5 and not more than \$50; and for any subsequent offence to a penalty of not less than \$10 and not more than \$100, and in addition his licence or permit, or both, may be suspended for a period of not more than thirty days. Penalty. R.S.O. 1937, c. 288, s. 31 (2).

33. Any person who removes, defaces, or in any manner interferes with any notice or obstruction lawfully placed on a highway shall be liable for the first offence to a penalty of not less than \$25 and not more than \$100, and shall also be liable to imprisonment for a term of not more than thirty days; and Defacing notice or removing obstruction.

for any subsequent offence shall be liable to a penalty of not less than \$100 and not more than \$500, and shall also be liable to imprisonment for a term of not more than six months. R.S.O. 1937, c. 288, s. 32.

PART VI

WEIGHT AND LOAD

Interpre-
tation.

34.—(1) In this section,

- (a) "Class A Highway" means a highway designated as such by the Minister;
- (b) "Class B Highway" means a highway not designated by the Minister as a "Class A Highway". R.S.O. 1937, c. 288, s. 33 (1).

Restriction
on weight
of vehicle
and load on
Class A
Highway.

(2) Unless a special permit has been issued pursuant to section 35, no vehicle having a gross weight in excess of the following shall be moved upon wheels, rollers or otherwise over or upon a Class A Highway:

As to
weight
upon four
wheels with
two driving
axles.

- (a) The gross weight of a vehicle of four wheels with two driving axles spaced more than eight feet apart and of a public vehicle shall not exceed 26,000 pounds and the weight upon one axle shall not exceed 16,000 pounds.

As to
weight
upon six
wheels.

- (b) The gross weight of a vehicle of six wheels so designed that under any loading conditions the ratio of the weight on the middle axle to the weight on the rear axle remains constant, shall not exceed 34,000 pounds and the weight on one axle shall not exceed 16,000 pounds.

As to
weight on
non-pneu-
matic tires.

- (c) The gross weight of a vehicle equipped wholly or in part with non-pneumatic tires shall not exceed 16,000 pounds and the weight upon one axle shall not exceed 12,000 pounds.

As to weight
of two-axled
semi-trailers.

- (d) The gross weight of a semi-trailer with two axles so designed that under any loading conditions the weight on both axles remains constant shall not exceed 28,000 pounds;

As to
weight of
other
vehicles.

- (e) The gross weight of a vehicle other than those mentioned in clauses *a*, *b*, *c* and *d* shall not exceed 22,000 pounds and the weight upon one axle shall not exceed 16,000 pounds, and if axles are spaced less than eight feet apart the weight on one axle shall not exceed

12,000 pounds. R.S.O. 1937, c. 288, s. 33 (2); 1941, c. 22, s. 7 (1-3); 1950, c. 25, s. 4.

(3) Unless a special permit has been issued pursuant to section 35, no vehicle having a gross weight in excess of the following shall be moved upon wheels, rollers or otherwise over or upon a Class B Highway: Restrictions as to Class B Highway.

(a) The gross weight of a vehicle shall not exceed 16,000 pounds and the weight upon one axle shall not exceed 12,000 pounds, and if axles are spaced less than eight feet apart the weight on one axle shall not exceed 10,000 pounds. As to weight of vehicle and load.

(4) No vehicle, object or contrivance for moving loads which is equipped with tires of less than six inches in width shall be operated or moved upon or over any highway, the weight of which, or the gross weight of which, exceeds 500 pounds upon any inch in width of tire, roller, wheel or other object, and no vehicle equipped with tires of six inches or more in width, the weight or gross weight of which exceeds 600 pounds upon any inch in width of the tire, shall be so operated without first obtaining a permit as provided by section 35. R.S.O. 1937, c. 288, s. 33 (3, 4). Restrictions as to weight on tires, etc.

(5) The Lieutenant-Governor in Council may make regulations prescribing the minimum width of tires with which any vehicle operated upon a highway shall be equipped. 1941, c. 22, s. 7 (4). Width of tires.

(6) For the purpose of this section the width of solid rubber or pneumatic tires shall be as stamped thereon by the manufacturer and approved by the Department. How width ascertained.

(7) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$25 and not more than \$50; for the second offence to a penalty of not less than \$50 and not more than \$100, and in addition his licence or permit may be suspended for a period not exceeding thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$100 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months. Penalty.

(8) The municipal corporation or other authority having jurisdiction over a bridge may by by-law approved by the Department make regulations limiting the weight of any vehicle passing over such bridge and notice of the limit of the weight fixed by such regulation, legibly printed, shall be posted up in a conspicuous place at each end of the bridge. R.S.O. 1937, c. 288, s. 33 (6-8). Limiting weight of vehicle on bridge.

Weight of vehicles passing over bridge, regulations as to.

(9) The Lieutenant-Governor in Council may make regulations limiting the weight of any vehicle passing over a bridge forming part of a provincial highway or a highway in territory without municipal organization and the requirements of subsection 8 with respect to the posting up of notice shall apply thereto. 1947, c. 45, s. 8.

Permits, grant of.

35.—(1) The municipal corporation or other authority having jurisdiction over the highway may, upon application in writing, grant a permit for the moving of heavy vehicles, loads, objects or structures in excess of the limits prescribed by section 19 or 34.

Permits, general or limited.

(2) Such permit may be general or may limit the time and the particular highway which may be used, and may contain any special conditions or provisions which may be deemed necessary for the protection of the highway from injury, and the municipal corporation or other authority may require a bond sufficient to cover the cost of repairing such possible injury to the highway.

Who may issue.

(3) The council of any municipality may, by by-law, provide that such permit may be issued by any officer of the corporation named therein.

Issue of permit by Department.

(4) In the case of a vehicle for which a permit is required under this section in order to pass over a highway or highways under the jurisdiction of two or more municipalities or other authorities, the permit so to do may be issued by the Department, which permit shall be in lieu of the several permits to be otherwise obtained from the municipal corporations or other authorities, and the permit may limit the time and the particular highway or highways which may be used, and may contain any special conditions or provisions which may be deemed necessary to protect such highways from injury, and the Department may require a bond sufficient to cover the cost of repairing such possible injury to the highway.

Responsibility for damages caused to highway.

(5) The owner, driver, operator or mover of any such vehicle, object or contrivance who has obtained the permit mentioned in this section shall nevertheless be responsible for all damages which may be caused to the highway by reason of the driving, operating or moving of any such vehicle, object or contrivance. R.S.O. 1937, c. 288, s. 34.

Prohibition as to carrying load in excess of permit.

Rev. Stat., c. 322.

36.—(1) Subject to subsection 1 of section 15 of *The Public Vehicles Act*, no motor vehicle or trailer having a permit issued under this Act, the fee for which is based upon the weight of the vehicle and load, shall at any time when upon a public highway carry a load in excess of that for which the permit was

issued as stated upon the permit, and for which the fee therefor was estimated. R.S.O. 1937, c. 288, s. 35 (1); 1941, c. 22, s. 8 (1).

(2) The permit issued for every commercial motor vehicle and for every trailer drawn by it shall whenever such vehicle is on a highway be carried by the driver thereof, or be placed in some readily accessible position in the vehicle and shall be produced when demanded by a constable or an officer appointed for carrying out the provisions of this Act or *The Public Commercial Vehicles Act*. R.S.O. 1937, c. 288, s. 35 (2). Production of permit.
Rev. Stat., c. 304.

(3) Subsection 2 shall not apply when a permit has been surrendered for transfer of registration or whenever such surrender is required by law. 1946, c. 39, s. 4 (1). Surrender of permit.

(4) During the months of March and April commercial motor vehicles and trailers, other than public vehicles, operated over or upon any portion of the King's Highway to which the provisions of this subsection are declared to be applicable by the Lieutenant-Governor in Council, or upon any other highway not within a city or separated town, shall not be loaded in excess of the limits prescribed hereunder without obtaining a permit as provided by section 35: Weight of load during March and April.

(a) A vehicle equipped wholly or in part with solid tires shall not be loaded in excess of one-half the carrying capacity as registered with the Department.

(b) A vehicle equipped wholly with pneumatic tires, having a carrying capacity registered with the Department of three tons and not more than six tons, shall not be loaded in excess of three tons.

(c) A vehicle equipped wholly with pneumatic tires and having a registered carrying capacity in excess of six tons shall not be loaded in excess of one-half the capacity registered with the Department.

(5) During the months of March and April, a vehicle other than a motor vehicle, or trailer, operated over or upon any portion of the King's Highway to which the provisions of this subsection are declared to be applicable by the Lieutenant-Governor in Council, or upon any other highway not within a city or separated town, and having a carrying capacity exceeding one ton, shall not be loaded in excess of 250 pounds upon any inch in width of tire without obtaining a permit as provided by section 35. Weight of load during March and April.

(6) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less Penalty.

than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days and in addition his licence or permit may be suspended for a period of not more than six months.

Application
to cities and
separated
towns.

(7) The council of a city or separated town may, by by-law, declare the provisions of subsections 4, 5 and 6 to be in force in respect of highways within the city or separated town. R.S.O. 1937, c. 288, s. 35 (3-6).

Extension
of period by
municipality or
other
authority.

(8) The municipal corporation or other authority having jurisdiction over any highway, may declare the provisions of subsections 4, 5 and 6 to extend and apply to highways under its jurisdiction during any period of the year or that the provisions of subsections 4 and 5 shall not apply to any or all highways under its jurisdiction; provided, however, that a by-law of a municipality passed under this subsection shall not take effect until it has received the approval of the Minister. R.S.O. 1937, c. 288, s. 35 (7); 1941, c. 22, s. 8 (2).

Extension
of period by
Lieutenant-
Governor
in Council.

(9) In the case of highways under the jurisdiction of the Department and highways in territory without municipal organization, the Lieutenant-Governor in Council may, upon the recommendation of the Minister, declare the provisions of subsections 4, 5 and 6 to extend and apply during any period of the year. R.S.O. 1937, c. 288, s. 35 (8); 1946, c. 39, s. 4 (2).

Power of
officer to
have load
weighed.

37.—(1) Any constable or any officer appointed for carrying out the provisions of this Act, having reason to believe that the weight of a vehicle and load is in excess of that permitted by this Act or in excess of that authorized under the permit issued for the vehicle may weigh the same either by means of portable or stationary scales and may require that such vehicle be driven to the nearest scales if they are within a distance of two miles, and where it is found that the vehicle is carrying an excessive load, the constable or officer may require the driver to forthwith remove so much of the load as is necessary to bring it within the weight so permitted or authorized.

Penalty
on driver.

(2) Any driver who, when so required to proceed to a weighing machine, refuses or fails to do so, shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or

permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200, and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months. R.S.O. 1937, c. 288, s. 36 (1, 2).

(3) When a weighing machine capable of weighing a vehicle cannot be reached within the prescribed distance, or in lieu of proceeding to such weighing machine, the driver of the vehicle shall produce forthwith an inventory showing the true weight of the vehicle and the goods or load thereon, verified in writing by the owner of the vehicle. R.S.O. 1937, c. 288, s. 36 (3); 1941, c. 22, s. 9 (1). Production of inventory showing weight of truck and load.

(4) In lieu of proceeding to a weighing machine the weight of the load may be determined by a portable weighing device provided by the officer, and it shall be the duty of the driver of the vehicle to facilitate the weighing of the vehicle and load by such device. Weighing device.

(5) Any person who violates any of the provisions of sub-sections 3 and 4 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 36 (4, 5). Penalty.

(6) For the purposes of this section,

Interpretation.

(a) a combination of vehicles consisting of a motor vehicle and semi-trailer shall be deemed to be one vehicle; and

(b) "semi-trailer" means any trailer which is so designed that, when operated, the forward part of its body or chassis rests upon the body or chassis of the towing vehicle. 1941, c. 22, s. 9 (2).

38.—(1) Every vehicle carrying a load which overhangs the rear of the vehicle to the extent of five feet or more shall display upon such overhanging load at the extreme rear end thereof at all times between dusk and dawn a red light, and at all other times a red flag or a red wooden or metal sign sufficient to indicate the projection of such load. Over-hanging loads.

(2) Every commercial motor vehicle and every trailer shall be loaded in such a manner that no portion of the load may become dislodged or fall from the commercial motor vehicle or trailer during transit. Commercial vehicle, how to be loaded.

Penalty for
illegal
loading.

(3) Any person who violates any of the provisions of subsection 1 or 2 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 37.

Regulations
re carriage
of
explosives.

39.—(1) The Lieutenant-Governor in Council may make regulations regulating the transportation of explosives and other dangerous articles upon the highway.

Penalty.

(2) Every person who violates the provisions of the regulations made under this section shall be liable to a penalty of not less than \$25 and not more than \$250, or to imprisonment for a term of not more than three months, or to both. 1939, c. 20, s. 7.

Name, etc.
of owner to
be displayed
on vehicle.

40.—(1) Every commercial motor vehicle and every trailer drawn by it shall have attached to or painted on both sides of the vehicle in a clearly visible position a sign showing the name and address of the owner, provided that the Department may by regulation designate any vehicle or classes of vehicles to which this subsection shall not apply. R.S.O. 1937, c. 288, s. 38 (1); 1949, c. 40, s. 6.

Reflector.

(2) Every commercial motor vehicle and every trailer shall have securely attached to the back thereof, within six inches of the left side of the body in such a position as to reflect the light from the headlights of a vehicle approaching from the rear, a red reflector approved by the Department.

Penalty.

(3) Any person who violates any of the provisions of subsection 1 or 2 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25, and in addition his licence or permit may be suspended for a period of not more than thirty days. R.S.O. 1937, c. 288, s. 38 (2, 3).

PART VII

RULES OF THE ROAD

Right-of-
way.

41.—(1) Where two persons in charge of vehicles or on horseback approach a crossroad or intersection, or enter an intersection, at the same time, the person to the right hand of the other vehicle or horseman shall have the right-of-way.

- (a) The driver or operator of a vehicle within an inter-section intending to turn to the left across the path of any vehicle approaching from the opposite direction may make such left turn only after affording a reasonable opportunity to the driver or operator of such other vehicle to avoid a collision. Left turn at inter-sections.
- (b) The driver or operator of a vehicle intending to turn to the right into an intersecting highway shall approach such intersection and turn as closely as practicable to the right curb or edge of the travelled portion of the highway. Rule for right turn at inter-sections.
- (c) The driver or operator of a vehicle intending to turn to the left into an intersecting highway shall approach such intersection as closely as practicable to the centre line of the highway and the left turn shall be made by passing to the right of such centre line where it enters the intersection, and upon leaving the intersection by passing to the right of the centre line of the highway then entered. Rule for left turn at inter-sections.
- (d) The driver or operator of a vehicle upon a highway before turning to the left from a direct line shall first see that such movement can be made in safety, and if the operation of any other vehicle may be affected by such movement shall give a signal plainly visible to the driver or operator of such other vehicle of the intention to make such movement. Signal for left turn.
- (e) The signal required in clause *d* shall be given either by means of the hand and arm in the manner herein specified or by a mechanical or electrical signal device which has been approved by the Department. Mode of signalling for left turn.
- (f) Whenever the signal is given by means of the hand and arm the driver or operator shall indicate his intention to turn by extending the hand and arm horizontally from and beyond the left side of the vehicle. R.S.O. 1937, c. 288, s. 39 (1). How to signal manually.
- (2) (a) Lights of green, amber and red may be used for signal-light traffic control systems and such lights shall be arranged vertically with the red light at the top and the green light at the bottom. R.S.O. 1937, c. 288, s. 39 (2), cl. (a); 1938, c. 17, s. 7 (1). Signal-light traffic control systems.
- (b) When a green signal-light is shown at an intersection the driver or operator of a vehicle or car of an electric railway which is approaching the intersection and facing such light may proceed across the intersection

or turn left or right. R.S.O. 1937, c. 288, s. 39 (2), cl. (b).

- (c) When a red signal-light is shown at an intersection every driver or operator of a vehicle or car of an electric railway which is approaching the intersection and facing such light shall bring his vehicle or car to a full stop immediately before entering the nearest crosswalk at the intersection, and shall not proceed until a green light is shown, provided that the driver or operator may turn to the right after bringing the vehicle or car to a full stop.
- (d) When green and amber signal-lights are shown simultaneously at an intersection, the driver or operator of a vehicle or car of an electric railway which is approaching the intersection and facing such lights, shall bring his vehicle or car to a full stop immediately before entering the nearest crosswalk at the intersection, provided that where any such vehicle or car cannot be brought to a stop in safety before entering the intersection, it may be driven cautiously across the intersection. R.S.O. 1937, c. 288, s. 39 (2), cls. (c, d); 1942, c. 21, s. 2; 1943, c. 10, s. 3 (1, 2).
- (e) When under this section the driver or operator of a vehicle or car of an electric railway is permitted to proceed across an intersection or to turn left or right, such permission shall be subject always to the safety of pedestrians and other traffic.
- (f) (i) When a green signal-light is shown at an intersection a pedestrian approaching the intersection and facing such light may proceed across the roadway provided that where markings upon the roadway indicate the portion of the roadway to be used by pedestrian traffic, the pedestrian shall proceed within the marked portion.
- (ii) When a red signal-light is shown, and where green and amber signal-lights are shown simultaneously, at an intersection, a pedestrian approaching such intersection and facing such light or lights, shall not enter the roadway unless he can do so with safety and without interfering with vehicular traffic. R.S.O. 1937, c. 288, s. 39 (2), cls. (e, f).
- (g) (i) When a red signal-light illuminated by rapid intermittent flashes is shown at an intersection the driver or operator of a vehicle or of a car of an electric railway, which is approaching the inter-

Signal light
illuminated
by rapid
intermittent
flashes,

section and facing such light, shall bring his vehicle or car to a full stop before entering such intersection and the right to proceed shall be subject to the rules applicable after making a full stop at a through highway.

- (ii) When an amber light illuminated by rapid intermittent flashes is shown at the intersection the driver or operator of a vehicle or of a car of an electric railway, which is approaching the intersection and facing such light, may proceed through the intersection only with caution. 1940, c. 9, s. 4 (1).
- (iii) When a red signal-light with a green arrow is shown at an intersection, the driver or operator of a vehicle or a car of an electric railway which is approaching the intersection and facing such light may proceed with caution into the intersection only to make the movement indicated by such arrow, but shall yield the right-of way to pedestrians and other traffic lawfully using the intersection; and a pedestrian facing such signal shall not enter the roadway unless he can do so safely and without interfering with vehicular traffic. 1950, c. 25, s. 5 (1).
- (h) The provisions of this subsection shall be subject to any sign or notice forbidding a left or right turn or both, which may be conspicuously posted at any intersection and to any direction of a constable or other person who is authorized to direct traffic. R.S.O. 1937, c. 288, s. 39 (2), cl. (g).
- (i) (i) Every signal-light traffic control system installed after the 9th day of April, 1936, shall consist of sets of green, amber and red signal-lights, each of which sets shall be mounted on a post or other standard located on the right side of the roadway used by the traffic controlled by it and upon the side of the intersecting roadway which is remote from such traffic as it approaches, and the lower portion of each of such sets shall be not less than nine feet from the level of the roadway, provided that where any such system is installed at an intersection other than an intersection where two highways cross, the arrangement of the lights shall comply as nearly as possible with the provisions of this subsection.
- (ii) A signal-light traffic control system may be erected and maintained at a place other than an

intersection, in which event the provisions of this section, except those which by their nature can have no application, shall be applicable, and any stop required shall be made at a sign or marking on the roadway indicating where the stop shall be made or, in the absence of any such sign or marking, at the signal.

- (iii) No signal-light traffic control system shall be erected unless the approval of the Department has been obtained. R.S.O. 1937, c. 288, s. 39 (2), cl. (h); 1939, c. 20, s. 8; 1950, c. 25, s. 5 (2).

Full stop
at through
highway.

(3) The operator or driver of every vehicle or car of an electric railway shall before entering or crossing a through highway bring the vehicle or car to a full stop immediately before entering the nearest crosswalk.

- (a) The driver or operator of any vehicle who has come to a full stop as required above, upon entering the through highway, as well as drivers or operators of vehicles on such through highway, shall be subject to the usual right-of-way rule prescribed in subsection 1 and applicable to vehicles at intersections.
- (b) "through highway" means any highway or part of a highway designated as such by the Minister or by by-law of a municipality approved by the Department, and every such highway shall be marked to comply with the regulations of the Department. R.S.O. 1937, c. 288, s. 39 (3); 1938, c. 17, s. 7 (2); 1943, c. 10, s. 3 (3).

Interpre-
tation.

(4) For the purposes of subsections 2 and 3, "intersection" includes any portion of a highway distinctly indicated as a crossing place for pedestrians by lines or other markings on the surface of the highway. 1941, c. 22, s. 10 (1).

Where
highway
divided
into lanes.

(5) Where a highway has been divided into clearly marked lanes for traffic,

- (a) a vehicle shall be driven as nearly as may be practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;
- (b) in the case of a highway which is divided into three lanes, a vehicle shall not be driven in the centre lane except when overtaking and passing another vehicle where the travelled portion of the highway is clearly visible and the centre lane is clear of traffic within a

reasonably safe distance, or in preparation for a left turn, or where such centre lane is at the time designated for the use of traffic moving in the direction in which the vehicle is proceeding and official signs are erected to indicate such designation;

- (c) any lane may be designated for slowly moving traffic or traffic moving in a particular direction provided that official signs are erected to indicate such designation, and where a highway is so designated the driver of every vehicle shall obey the direction on the official signs. R.S.O. 1937, c. 288, s. 39 (4); 1947, c. 45, s. 9.

(6) Where a highway has been designated for the use of one-way traffic only and official signs have been erected accordingly, vehicles shall be driven only in the direction so designated. R.S.O. 1937, c. 288, s. 39 (5). Highway designated for one-way traffic.

(7) For the purposes of subsections 5 and 6, "designated" means designated by the Minister or by any person authorized by him to make such designation or designated by by-law of a municipality, approved by the Department. R.S.O. 1937, c. 288, s. 39 (6); 1950, c. 25, s. 5 (3). Interpretation.

(8) Where a person travelling or being upon a highway in charge of a vehicle meets another vehicle, he shall turn out to the right from the centre of the road, allowing to the vehicle so met one-half of the road free. Vehicles meeting others.

(9) Where a person travelling or being upon a highway in charge of a vehicle meets a person travelling upon a bicycle or tricycle, the person in charge of the vehicle shall allow the person travelling on the bicycle or tricycle sufficient room on the travelled portion of the highway to pass. Vehicles meeting bicycles, etc.

(10) Where a person travelling or being upon a highway in charge of a vehicle or on horseback is overtaken by a vehicle or horseman travelling at greater speed, the person so overtaken shall quietly turn out to the right and allow such vehicle or horseman to pass. R.S.O. 1937, c. 288, s. 39 (7-9). Vehicles or horsemen overtaken by others.

(11) Any person so overtaking another vehicle or horseman shall turn out to the left so far as may be necessary to avoid a collision with the vehicle or horseman overtaken, and the person overtaken shall not be required to leave more than one-half of the road free; provided that the person in charge of a vehicle may overtake and pass another vehicle upon its right side if the other vehicle is making or about to make a left turn. R.S.O. 1937, c. 288, s. 39 (10); 1938, c. 17, s. 7 (3). Vehicles or horsemen overtaking others.

Bicycles or tricycles overtaken by vehicles or horsemen.

(12) Where a person travelling or being upon a highway on a bicycle or a tricycle is overtaken by a vehicle or horseman travelling at a greater speed, the person so overtaken shall quietly turn out to the right and allow such vehicle or horseman to pass and the person so overtaking a bicycle or tricycle shall turn out to the left so far as may be necessary to avoid a collision.

Bicycle not to be attached to other vehicle.

(13) No person while riding on a bicycle shall attach the bicycle to or take hold of any other vehicle for the purpose of being drawn along a highway.

Person on bicycle.

(14) No person riding on a bicycle designed for carrying one person only shall carry any other person thereon.

Driver unable to turn out is to stop.

(15) Where one vehicle is met or overtaken by another, if by reason of the weight of the load on either of the vehicles so meeting or on the vehicle so overtaken, the driver finds it impracticable to turn out, he shall immediately stop, and, if necessary for the safety of the other vehicle, and if required so to do, he shall assist the person in charge thereof to pass without damage.

Passing vehicle going in same direction.

(16) No person in charge of a vehicle shall pass or attempt to pass another vehicle going in the same direction on a highway unless the travelled portion of the highway in front of and to the left of the vehicle to be passed is safely free from approaching traffic.

Headway for commercial vehicles.

(17) The driver or operator of a commercial motor vehicle when driving upon a highway outside of a city, town or village shall not follow within 100 feet of another commercial motor vehicle; but this shall not be construed to prevent one commercial motor vehicle overtaking and passing another such vehicle.

Approaching ambulance, fire or police department vehicle.

(18) The driver of a vehicle, upon the approach of, an ambulance, fire or police department vehicle, or public utility emergency vehicle upon which a bell or siren is sounding, shall immediately bring such vehicle to a standstill as near as is practicable to the right-hand curb or edge of the roadway and parallel therewith and clear of any intersection.

Following fire department vehicle.

(19) No vehicle shall follow any fire department vehicle when responding to an alarm at a distance of less than 500 feet.

Penalty.

(20) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50,

and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 39 (11-19).

42.—(1) When a highway has been divided into traffic lanes by an unpaved portion lying between two parallel paved roadways, no person shall operate or drive any vehicle or lead, ride or drive any animal, Crossing traffic lanes.

(a) along or upon such highway except upon the roadway on the right-hand side, having regard to the direction in which the vehicle is being operated or drawn or the animal is being led, ridden or driven; or

(b) on, over or across the unpaved portion of the highway except at those points where crossings are marked or provided.

(2) Any person who violates any of the provisions of sub-section 1 shall be liable for the first offence to a penalty of not more than \$10; for the second offence to a penalty of not more than \$20; for the third offence to a penalty of not more than \$30; and for any subsequent offence to a penalty of not more than \$50. 1938, c. 17, s. 8.

43.—(1) No person shall park or leave standing any vehicle whether attended or unattended, upon the travelled portion of a highway, outside of a city, town or village, when it is practicable to park or leave such vehicle off the travelled portion of such highway; provided, that in any event, no person shall park or leave standing any vehicle, whether attended or unattended, upon such a highway unless a clear view of such vehicle and of the highway for at least 400 feet beyond the vehicle may be obtained from a distance of at least 400 feet from the vehicle in each direction upon such highway. Parking cars on highways.
R.S.O. 1937, c. 288, s. 40 (1); 1941, c. 22, s. 11 (1).

(2) The Lieutenant-Governor in Council may make regulations prohibiting or regulating the parking of vehicles upon the King's Highway, and upon any other highway within a distance of 300 feet from the intersection of such highway with the King's Highway. Parking on provincial highway. 1947, c. 45, s. 10 (1); 1950, c. 25, s. 6.

(3) Whenever a constable or an officer appointed for carrying out the provisions of this Act finds a vehicle upon a highway in violation of the provisions of this section or the regulations, he may move the vehicle or require the driver or operator or other person in charge of the vehicle to move the same. Removal of car parked at prohibited place.
R.S.O. 1937, c. 288, s. 40 (2); 1947, c. 45, s. 10 (2).

Disabled cars.

(4) The provisions of this section shall not apply to the driver or operator of a vehicle which is so disabled while on a highway that it is impossible to avoid temporarily a violation of such provisions. R.S.O. 1937, c. 288, s. 40 (3); 1938, c. 17, s. 9 (1).

Precaution against vehicle being set in motion.

(5) No person shall park or leave any vehicle upon a highway unless he has taken such action as may be reasonably necessary in the circumstances to prevent the vehicle from moving or being set in motion. 1947, c. 45, s. 10 (3).

Warning lights on commercial motor vehicle.

(6) Every commercial motor vehicle, when on a highway outside a city, town or village after dusk and before dawn, shall be equipped with a sufficient number of flares, lamps or lanterns which have been approved by the Department, capable of continuously producing two warning lights, each visible from a distance of at least 500 feet for a period of at least eight hours. R.S.O. 1937, c. 288, s. 40 (4).

Flares on disabled commercial motor vehicle or trailer.

(7) Whenever any commercial motor vehicle or trailer is disabled during the period when lighted lamps are required to be displayed on vehicles and the vehicle cannot immediately be removed from the travelled portion of a highway outside a city, town or village, the driver or other person in charge of the vehicle shall cause such flares, lamps or lanterns to be lighted, placed and maintained upon the highway until dawn or the removal of the vehicle, one at a distance of approximately 100 feet in advance of the vehicle and one at a distance of approximately 100 feet to the rear of the vehicle. R.S.O. 1937, c. 288, s. 40 (5); 1938, c. 17, s. 9 (2); 1941, c. 22, s. 11 (2).

Penalty.

(8) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$5 and not more than \$50; and for any subsequent offence to a penalty of not less than \$10 and not more than \$100, and in addition his licence or permit, or both, may be suspended for a period of not more than thirty days. R.S.O. 1937, c. 288, s. 40 (6).

Vehicles interfering with traffic.

(9) Notwithstanding the provisions of this section, no person shall park or leave standing any vehicle whether attended or unattended upon any highway in such a manner as to interfere with the movement of other traffic or the clearing of snow from the highway. 1946, c. 39, s. 5, *part*; 1947, c. 45, s. 10 (4).

Powers of constable to remove vehicle.

(10) A constable or an officer appointed for the carrying out of the provisions of this Act upon discovery of any vehicle parked or left in contravention of subsection 9 or of a municipal by-law, may cause it to be moved or taken to and placed or

stored in a suitable place and all costs and charges for removing, care and storage thereof, if any, shall be a lien upon the vehicle, which may be enforced in the manner provided by section 48 of *The Mechanics' Lien Act*. 1946, c. 39, s. 5, *part*. Rev. Stat., c. 227.

44.—(1) Where a portable or traction engine is met or overtaken on a highway by a vehicle drawn by a horse or other animal, or by a horseman, the driver of the engine shall, if practicable, turn out to the right and give such vehicle or horseman at least one-half of the road, and, if requested by the driver, shall stop and remain stationary until the vehicle or horseman has safely passed, and assist such driver or horseman to pass. Portable and traction engines meeting or overtaken by other vehicles.

(2) It shall be the duty of the driver or of the person in charge of any such engine to see that it makes no noise by whistling or otherwise when any horse or animal is passing or is near or is about to pass the engine on any highway. Noises not to be made when passing horses, etc.

(3) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50. R.S.O. 1937, c. 288, s. 41. Penalty.

45.—(1) Where a person travelling or being upon a highway in charge of a vehicle, or on a bicycle or tricycle, or on horseback or leading a horse, overtakes a street car or a car of an electric railway, operated in or near the centre of the travelled portion of the highway which is stationary for the purpose of taking on or discharging passengers, he shall not pass the car or approach nearer than six feet measured back from the rear or front entrance or exit, as the case may be, of the car on the side on which passengers are getting on or off until such passengers have got on or got safely to the side of the street, as the case may be; provided, however, that this subsection shall not apply where a safety zone has been set aside and designated by a by-law passed under paragraph 108 of subsection 1 of section 388 of *The Municipal Act*. R.S.O. 1937, c. 288, s. 42 (1); 1943, c. 10, s. 4. Requirement when approaching standing car.

(2) No person in charge of a vehicle or on a bicycle or tricycle or on horseback or leading a horse overtaking a street car or the car of an electric railway, operated in or near the centre of the travelled portion of the highway, which is stationary or in motion, shall pass on the left-hand side of such car, having reference to the direction in which such car is travelling; but this shall not apply to a vehicle belonging to a Prohibition as to passing street cars on left-hand side.

municipal fire department while proceeding to a fire or answering a fire alarm call.

Penalty.

(3) Any person who violates any of the provisions of this section shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200 and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months. R.S.O. 1937, c. 288, s. 42 (2, 3).

Approach-
ing ridden
or driven
horses, etc.

46.—(1) Every person having the control or charge of a motor vehicle upon a highway, when approaching a horse or other animal which is drawing a vehicle or being driven, led or ridden, shall operate, manage and control the motor vehicle in such manner as to exercise every reasonable precaution to prevent the frightening of the horse or other animal and to ensure the safety and protection of any person driving, leading or riding upon the horse or other animal or being in any vehicle drawn by the horse or other animal.

Penalty.

(2) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100, and in addition his licence or permit may be suspended for a period of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200 and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than six months. R.S.O. 1937, c. 288, s. 43.

PART VIII

PROHIBITIONS AND RESPONSIBILITY FOR ACCIDENTS

Depositing
glass, etc.
on highway
prohibited.

47.—(1) No person shall throw or deposit or knowingly leave on a highway any glass, nails, tacks, scraps of metal or other material which may be injurious to the tires of motor vehicles, or while the highway is covered with snow, deposit ashes or other refuse thereon. R.S.O. 1937, c. 288, s. 44 (1).

Soliciting
rides
prohibited.

(2) No person shall, while on the travelled portion of a highway, solicit a ride or any other thing from or offer to perform any service for the driver or operator of a motor

vehicle other than a public vehicle. R.S.O. 1937, c. 288, s. 44 (2); 1939, c. 20, s. 9.

(3) Any person who violates any of the provisions of sub-Penalty. section 1 or 2 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 44 (3).

48.—(1) If an accident occurs on a highway, every person Duty of person in charge in case of accident. in charge of a vehicle or car of an electric railway who is directly or indirectly a party to the accident shall remain at or return to the scene of the accident and render all possible assistance and give in writing upon request to any one sustaining loss or injury or to any constable or any officer appointed for carrying out the provisions of this Act or to any witness, his name and address, and also the name and address of the owner of the vehicle, and the number of the permit, if any. R.S.O. 1937, c. 288, s. 45 (1); 1943, c. 10, s. 5.

(2) Any person who violates any of the provisions of sub-Penalty. section 1 shall be liable for the first offence to a penalty of not less than \$25 and not more than \$100, and shall also be liable to imprisonment for a term of not more than thirty days, and in addition his licence or permit may be suspended for a period of not more than sixty days; and for any subsequent offence shall be liable to a penalty of not less than \$100 and not more than \$500 and shall also be liable to imprisonment for a term of not more than six months, and in addition his licence or permit may be suspended for a period of not more than one year. R.S.O. 1937, c. 288, s. 45 (2).

49. The owner of a motor vehicle shall incur the penalties Motor owner and driver liable for penalties. provided for any violation of this Act or of any regulation made by the Lieutenant-Governor in Council or of any municipal by-law for regulating traffic approved by the Department unless at the time of the violation the motor vehicle was in the possession of some person other than the owner or his chauffeur without the owner's consent, and the driver of a motor vehicle not being the owner shall also incur the penalties provided for any such violation. R.S.O. 1937, c. 288, s. 46; 1946, c. 39, s. 6.

50.—(1) The owner of a motor vehicle shall be liable for Liability for loss or damage. loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle on a highway unless the

motor vehicle was without the owner's consent in the possession of some person other than the owner or his chauffeur, and the driver of a motor vehicle not being the owner shall be liable to the same extent as the owner.

Liability for injury to passengers.

(2) Notwithstanding subsection 1, the owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying passengers for compensation, shall not be liable for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to, or alighting from the motor vehicle. R.S.O. 1937, c. 288, s. 47.

Onus of disproving negligence.

51.—(1) When loss or damage is sustained by any person by reason of a motor vehicle on a highway, the onus of proof that the loss or damage did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle shall be upon the owner or driver.

Application of section.

(2) This section shall not apply in case of a collision between motor vehicles on the highway nor to an action brought by a passenger in a motor vehicle in respect of any injuries sustained by him while a passenger. R.S.O. 1937, c. 288, s. 48.

Drivers under 15 prohibited.

52.—(1) No person under the age of 15 years shall drive or operate a motor vehicle or farm tractor on a highway.

Employment of drivers under 15 prohibited.

(2) No person shall employ or permit anyone under the age of 15 years to drive or operate a motor vehicle or farm tractor on a highway. R.S.O. 1937, c. 288, s. 49 (1, 2); 1943, c. 10, s. 6; 1949, c. 40, s. 7 (1).

Exception.

(3) Subsections 1 and 2 shall not apply in respect of the driving or operating of a farm tractor directly across a highway. 1949, c. 40, s. 7 (2).

Penalty.

(4) Any person who violates any of the provisions of subsection 1 or 2 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50. R.S.O. 1937, c. 288, s. 49 (3).

Prohibition as to letting or hiring.

53.—(1) No person shall hire or let for hire a motor vehicle unless the person by whom the motor vehicle is to be driven is a person licensed to drive a motor vehicle as required by this Act. R.S.O. 1937, c. 288, s. 50 (1).

Non-resident's licence.

(2) Subsection 1 shall not apply to a resident of any other province of Canada who does not reside or carry on business in Ontario for more than six consecutive months in any one year

or to a resident of a country or state which grants similar exemptions and privileges to residents of Ontario, who does not reside in Ontario for more than three consecutive months in any one year provided such person is the holder of a chauffeur's or operator's licence issued by the province, country or state in which he resides. R.S.O. 1937, c. 288, s. 50 (2); 1941, c. 22, s. 12.

(3) Every person, whether a resident of Ontario or not, hiring a motor vehicle shall produce his operator's or chauffeur's licence for the inspection of the person from whom the vehicle is being hired. Production of licence when hiring motor vehicle.

(4) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 50 (3, 4). Penalty.

54. The licence or permit or, in case the licensee is also the owner of the motor vehicle, then both the licence and permit of a person who is convicted of an offence under subsection 4 of section 285 of the *Criminal Code* (Canada) is thereupon and hereby suspended for a period of, Intoxicated persons not to drive. R.S.C. 1927, c. 36.

- (a) upon the first offence, three months, but where injury to or the death of any person or damage to property occurred in connection with the offence, six months;
- (b) upon the second offence, six months, but where injury to or the death of any person or damage to property occurred in connection with the offence, one year;
- (c) upon any subsequent offence, one year, but where injury to or the death of any person or damage to property occurred in connection with the offence, two years;

provided that if an order is made under subsection 7 of such section upon a conviction under subsection 4 of such section prohibiting a person from driving a motor vehicle for any longer period, the licence or permit or both shall remain suspended during such longer period. 1941, c. 22, s. 13; 1950, c. 25, s. 7.

55. Where a person in charge of a vehicle, other than a motor vehicle, or of a horse or other animal used as a means of conveyance, travelling or being on a highway, is through Drunkenness of driver or rider.

drunkenness unable to drive or ride the same with safety to other persons travelling on or being upon the highway, he shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200 and shall also be liable to imprisonment for a term of not more than thirty days. R.S.O. 1937, c. 288, s. 52.

Racing and
disorderly
conduct.

56.—(1) No person shall race or drive furiously any horse or other animal, or shout, or use any blasphemous or indecent language upon a highway.

Penalty.

(2) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200 and shall also be liable to imprisonment for a term of not more than thirty days. R.S.O. 1937, c. 288, s. 53.

Service of
notice or
process on
non-
residents.

57. The use of a highway within Ontario by any person not resident in Ontario operating or responsible for the operation of a motor vehicle within Ontario, shall, by virtue of the right of user conferred by this Act, be deemed to constitute the Registrar an agent of such person for the service of notice or process in an action in Ontario arising out of a motor vehicle accident in Ontario in which such person is involved subject to the following conditions:

Service of
notice, etc.

(a) Such notice or process may be served by leaving a copy thereof with or at the office of the Registrar, together with a bond in form and by sureties approved by the Registrar in the sum of \$200 conditioned on the failure of the plaintiff to prevail in the action for the purpose of reimbursing the defendant for the expenses necessarily incurred by him in defending the action in Ontario.

Sufficiency
of service.

(b) Such service shall be sufficient service if notice of such service and a copy of the notice or process are forthwith sent by registered mail to the defendant and the defendant's return receipt is filed with the registrar or clerk of the court in which the action or proceeding is brought. R.S.O. 1937, c. 288, s. 54.

PART IX

ARRESTS, IMPOUNDING OF MOTOR VEHICLES, AND REWARDS

58.—(1) Every person called upon to assist a constable or officer appointed for carrying out the provisions of this Act in the arrest of a person suspected of having committed any offence mentioned in subsection 2 may assist if he knows that the person calling on him for assistance is a constable or officer appointed for carrying out the provisions of this Act, and does not know that there are no reasonable grounds for the suspicion. R.S.O. 1937, c. 288, s. 55 (1). Assisting officers.

(2) Every constable or officer appointed for carrying out the provisions of this Act, who, on reasonable and probable grounds, believes that a violation of any of the provisions of subsections 1 and 2 of section 4; subsections 1 and 3 of section 5; subsection 1 of section 6; subsection 1 of section 7; subsection 2 or 3 of section 25; section 29, 30, 33, 48 or 68, has been committed, whether it has been committed or not and who, on reasonable and probable grounds, believes that any person has committed such violation, may arrest such person without warrant whether such person is guilty or not. R.S.O. 1937, c. 288, s. 55 (2); 1947, c. 45, s. 11. Arrests by officer without warrant.

(3) Every person may arrest without warrant any person whom he finds committing any such violation. R.S.O. 1937, c. 288, s. 55 (3). Arresting on view.

(4) A constable or officer appointed for carrying out the provisions of this Act, making an arrest without warrant, may detain the motor vehicle with which the offence was committed until the final disposition of any prosecution under this Act or under the *Criminal Code* (Canada), but the motor vehicle may be released on security for its production being given to the satisfaction of a justice of the peace or a magistrate. R.S.O. 1937, c. 288, s. 55 (4); 1950, c. 25, s. 8. Detaining vehicle when arrest is made. R.S.C. 1927, c. 36.

(5) All costs and charges for the care and storage of a motor vehicle detained under subsection 4 shall be a lien upon the motor vehicle, which may be enforced in the manner provided by section 48 of *The Mechanics' Lien Act*. 1943, c. 10, s. 7. Care and storage charges. Rev. Stat., c. 227.

(6) A constable or officer appointed for carrying out the provisions of this Act, making an arrest without warrant, shall, with reasonable diligence, take the person arrested before a justice of the peace or magistrate to be dealt with according to law. R.S.O. 1937, c. 288, s. 55 (5). Duty of person arresting without warrant.

Impounding
motor
vehicle.

R.S.C. 1927,
c. 36.

59.—(1) In the event of,

- (a) a conviction under section 25 or 68 of this Act or subsection 4 or 8 of section 285 of the *Criminal Code* (Canada); or
- (b) a second conviction under section 48; or
- (c) a third conviction under section 3, 21, 29, 30, 52 or 75, or any of them,

the motor vehicle driven by or under the care or control of the person convicted at the time of the commission of the offence or last offence, as the case may be, shall be seized, impounded and taken into custody of the law for a period of three months, provided the motor vehicle was at such time owned by or registered in the name of such person, or owned by or registered in the name of the husband, wife, parent or dependent child of such person. 1938, c. 17, s. 10, *part*; 1939, c. 20, s. 10; 1949, c. 40, s. 8.

Second or
third
conviction.

(2) Where there is a conviction under the section mentioned in clause *b* of subsection 1 and a previous conviction under a section mentioned in clause *a*, such first-mentioned conviction shall be deemed a second conviction, and where there is a conviction under a section mentioned in clause *c* of subsection 1 and a previous conviction or two previous convictions under a section or sections mentioned in clause *a* or *b*, such first-mentioned conviction shall be deemed to be a second or third conviction as the case may be. 1938, c. 17, s. 10, *part*.

Seizure,
etc., of
vehicle upon
conviction
of certain
offences.

(3) Where a person pleads guilty to any of the offences mentioned in subsection 1 the provisions of subsection 1 shall not apply unless the person has been given notice,

- (a) by a printed or written statement upon or accompanying the summons; or
- (b) by the magistrate or judge verbally before accepting the plea,

in the following form or to the like effect:

"The Highway Traffic Act provides that upon conviction of the offence with which you are charged, in the circumstances indicated therein, the motor vehicle which was driven by you or under your care or control at the time of the commission of the offence shall be seized, impounded and taken into the custody of the law." 1946, c. 39, s. 7.

(4) All costs and charges for the care and storage of the motor vehicle shall be a lien upon the motor vehicle, which may be enforced in the manner provided by section 48 of *The Mechanics' Lien Act*. 1943, c. 10, s. 8.

Costs and charges for care and storage.

Rev. Stat., c. 227.

(5) If the person so convicted or the owner gives sufficient security to the convicting magistrate or justice of the peace, by bond, recognizance, or otherwise, that the motor vehicle shall not be operated upon a highway during such period of three months, the same may be delivered to the person so convicted or the owner thereof, and if the motor vehicle is operated upon a highway during such period, it shall be deemed to be operated without a permit. R.S.O. 1937, c. 288, s. 56 (3); 1950, c. 25, s. 9.

Release of vehicle on security given by owner.

(6) A constable or an officer appointed for carrying out the provisions of this Act upon the discovery of a motor vehicle apparently abandoned on or near a highway or of a motor vehicle without proper registration plates, shall take the motor vehicle into his custody and may cause it to be taken to and stored in a suitable place and all costs and charges for removal, care or storage thereof shall be a lien upon the motor vehicle, which may be enforced in the manner provided by section 48 of *The Mechanics' Lien Act*. R.S.O. 1937, c. 288, s. 56 (4).

Abandoned vehicle.

Rev. Stat., c. 227.

60.—(1) Any by-laws passed by a municipal corporation or board of police commissioners or police trustees for regulating traffic on the highways which are inconsistent with the provisions of this Act, shall be deemed to be repealed, and hereafter all by-laws for regulating traffic on highways shall be submitted to the Department for approval and shall not become operative until the Department has approved of same. R.S.O. 1937, c. 288, s. 57.

Municipal by-laws inconsistent.

(2) Any by-law for regulating traffic on highways which is submitted to the Department for approval may be approved in whole or in part and where part of a by-law is approved only that part shall become operative. 1939, c. 20, s. 11.

Approval of traffic by-law in whole or in part.

PART X

PROCEDURE, PENALTIES AND CONVICTION

61.—(1) Subject to subsections 2 and 3 no action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of twelve months from the time when the damages were sustained.

Time limit for instituting civil actions.

Limitation
in case of
death.
Rev. Stat.,
c. 132.

(2) Where death is caused the action may be brought within the time limited by *The Fatal Accidents Act*. R.S.O. 1937, c. 288, s. 60 (1, 2).

Action for
damages.

(3) Notwithstanding subsections 1 and 2 when an action is brought within the time limited by this Act for the recovery of damages occasioned by a motor vehicle and a counterclaim is made or third party proceedings are instituted by a defendant in respect of damages occasioned in the same accident, the lapse of time herein limited shall be no bar to the counterclaim or third party proceedings. 1938, c. 17, s. 12.

Recovery.

Rev. Stat.,
c. 379.

62. Every person who contravenes any provision of this Act or of the regulations shall be guilty of an offence and the penalties imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act*. R.S.O. 1937, c. 288, s. 61, *amended*.

Right to
damages
reserved.

63. No penalty or imprisonment shall be a bar to the recovery of damages by the injured person. R.S.O. 1937, c. 288, s. 62.

Applica-
tion of
penalties.

64. Every penalty when collected shall be paid to the treasurer of the local municipality in which the offence was committed, if the offence was committed on other than the King's Highway or a county highway; and shall be applied to the general purposes thereof, and if the offence was committed on the King's Highway, the penalty when collected shall be paid to the Department, and if on a county highway to the treasurer of the county. R.S.O. 1937, c. 288, s. 63.

Justice to
certify con-
viction to
Minister.

65.—(1) A magistrate or justice of the peace who makes a conviction under this Act shall, if the offence was committed by an owner or driver of a motor vehicle, forthwith certify the same to the Minister, setting out the name, address and description of the person convicted, the number of the permit of the motor vehicle with which the offence was committed, the number of the section of the Act contravened and the time the offence was committed, and if the offence was committed by a person licensed under section 21 or 75, also the number of the licence, and if three such convictions for an offence against subsection 1 or 3 of section 5, subsection 1 of section 7 or section 29, 30 or 48 are made against the same person, the permit of the motor vehicle with which the offence, for which such third conviction was made, was committed, or the licence issued under section 21 or 75, as the case may be, or both, may in addition to the penalties provided in such section, be cancelled, and in the event of cancellation the

offender shall not be entitled to a permit or licence for a period of two years thereafter. R.S.O. 1937, c. 288, s. 64 (1).

(2) A copy of any writing, paper or document filed in the ^{Evidence.} Department pursuant to this Act purporting to be certified by the Deputy Minister or the Registrar under the seal of the Department as a true copy shall be received in evidence in all courts without proof of the seal or signature and shall be *prima facie* evidence of the facts contained therein. R.S.O. 1937, c. 288, s. 64 (2); 1946, c. 39, s. 8.

66.—(1) If an owner of a motor vehicle is served with a summons to appear in a county other than that in which he resides for an offence against this Act, and his defence is that neither he nor his motor vehicle was at the place of the alleged offence at the time such offence occurred, and that the summons must have been issued against him through an error of the informant as to the number on the official number plate, then and in that case only he may appear before a justice of the peace in the county in which he resides and, in the same manner as if he were being tried for an offence against this Act, give evidence by himself and corroborated by the evidence of at least two other credible witnesses that neither he nor his motor vehicle was at the place of the alleged offence at the time such offence occurred, and that the summons must have been issued against him through an error of the informant as to the number on the official number plate. R.S.O. 1937, c. 288, s. 65 (1); 1938, c. 17, s. 13. ^{When owner may appear before justice of the peace.}

(2) The said justice, if satisfied of the truth of such evidence, shall forthwith make out a certificate in the form set out in the Schedule to this Act, and forward the same by registered letter post to the justice before whom the summons is returnable. ^{Certificate.}

(3) The justice before whom the summons is returnable shall, upon receiving such certificate, thereupon dismiss the charge unless he has reason to believe that the testimony is untrue in whole or in part, in which case he may adjourn the case and again summon the defendant, who shall then be required to attend before him at the place and time mentioned in the summons. R.S.O. 1937, c. 288, s. 65 (2, 3). ^{Dismissal or adjournment.}

67. Any person who violates any of the provisions of this Act or of any regulation where a penalty for the violation is not provided for herein, shall be liable for the first offence to a penalty of not more than \$10; for the second offence to a penalty of not more than \$20; and for the third offence to a penalty of not more than \$30; and for any subsequent offence to a penalty of not more than \$50. R.S.O. 1937, c. 288, s. 66. ^{General penalty.}

Penalty for operating vehicle when permit suspended or cancelled.

68.—(1) Any person who operates a motor vehicle the permit for which is under suspension or has been cancelled and any chauffeur or operator whose licence is under suspension or has been cancelled who operates a motor vehicle shall be liable for a first offence to a penalty of not less than \$25 and not more than \$100, and shall also be liable to imprisonment for a term of not more than thirty days; and for any subsequent offence shall be liable to a penalty of not less than \$100 and not more than \$500 and shall also be liable to imprisonment for a term of not more than six months.

Forfeiture of vehicle on conviction.

(2) Where any person is convicted of operating a motor vehicle the permit for which is under suspension or has been cancelled, the motor vehicle shall be forfeited to His Majesty in right of Ontario. 1947, c. 45, s. 12.

Where person whose permit or licence suspended does not hold permit or licence.

69. Where by or under the provisions of this Act, a permit or licence is suspended and the person to whom the suspension applies is not the holder of a permit or licence, as the case may be, such person shall be deemed for all the purposes of this Act to be a person whose permit or licence, as the case may be, has been suspended. 1950, c. 25, s. 10, *part.*

Suspension of licence and permit and impounding of vehicle where appeal.

70. If a person to whom the provisions of section 54 or 59 apply enters an appeal against his conviction and there is filed,

(a) with the convicting magistrate sufficient security for the production of the motor vehicle if the appeal should fail; and

(b) proof of financial responsibility under section 81,

the provisions of section 54 or 59 shall not apply unless the conviction is sustained on appeal. 1950, c. 25, s. 10, *part.*

Interpretation.

71. Where a penalty is provided in this Act for a first, second, third or subsequent offence, the words "first", "second", "third", or "subsequent" shall relate only to offences committed in the same calendar year; but this shall not apply to offences under the sections referred to in subsection 1 of section 59. R.S.O. 1937, c. 288, s. 68; 1938, c. 17, s. 14 (1).

PART XI

TRACTION ENGINES ON HIGHWAYS

Limit of weight.

72.—(1) Traction engines, not exceeding 15 tons in weight, may be used upon a highway, subject to the provisions of this Part.

Speed.

(2) The speed of a traction engine shall at no time in cities,

towns and villages exceed the rate of three miles per hour, or elsewhere the rate of six miles per hour.

(3) The width of the driving wheels of all such engines shall be at least twelve inches and the wheels of the trucks or wagons drawn thereby shall be at least four inches in width for the first two tons capacity, load and weight of truck included, and at least an additional one-half inch for each additional ton. Width of wheels.

(4) No traction engine manufactured after the 1st day of January, 1924 and having a weight in excess of three tons shall be operated upon a highway unless the cleats, if any, on the rear wheels have a smooth surface and are not less than one and one-half inches in width of face, and if the cleats extend the full width of the rim of the wheel, they shall be placed at intervals of not more than six inches and if they do not extend the full width of the rim but are staggered diagonally, they shall be placed at intervals of not more than four and one-half inches, and in no case shall they be placed at an angle of more than thirty degrees with the horizontal axis of the wheel. Cleats on rear wheels.

(5) No traction engine manufactured after the 1st day of January, 1924 shall be operated upon a highway unless the cleats or flanges, if any, on the wheels are such that the weight resting upon the surface of the highway does not exceed 200 pounds upon any square inch of cleat or flange, assuming the entire width of the face of the cleat or flange to bear on the highway. R.S.O. 1937, c. 288, s. 69. Cleats.

73.—(1) Before it shall be lawful to run such engine over a highway, the person proposing to run the engine shall, at his own expense, strengthen all bridges and culverts to be crossed by the engine, and keep the same in repair so long as the highway is so used. Strengthening bridges.

(2) The cost of such repairs shall be borne by the owners of different engines in proportion to the number of engines run over such bridges or culverts. Owners of different engines to contribute.

(3) Subsections 1 and 2 shall not apply to engines of less than ten tons in weight, used for threshing purposes or for machinery for the construction of roadways. Certain engines not affected.

(4) Before crossing any such bridge or culvert the person proposing to run any traction engine shall lay down on the bridge or culvert planks of sufficient width and thickness to fully protect the flooring or surface of the bridge or culvert from any injury that might otherwise result thereto from the contact of the wheels of the engine, and in default thereof the person in charge and his employer, if any, shall be liable to Planks to be laid on surface of bridge.

the corporation of the municipality for all damage resulting to the flooring or surface of the bridge or culvert. R.S.O. 1937, c. 288, s. 70.

Penalty for
contraven-
ing Part.

74. Any person who violates any of the provisions of this Part shall be liable to a penalty of not less than \$5 and not more than \$25. R.S.O. 1937, c. 288, s. 71.

PART XII

OPERATOR'S LICENCE

Operator's
licence.

75.—(1) No person other than one holding a chauffeur's licence shall operate or drive a motor vehicle on a highway unless he holds an operator's licence issued to him under this section, and no person who is the owner or in possession or control of a motor vehicle shall permit any person who is not the holder of a chauffeur's or operator's licence to operate or drive the motor vehicle. R.S.O. 1937, c. 288, s. 72 (1); 1938, c. 17, s. 15.

Penalty.

(2) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not less than \$10 and not more than \$50; for the second offence to a penalty of not less than \$20 and not more than \$100; and for any subsequent offence shall be liable to a penalty of not less than \$50 and not more than \$200 and shall also be liable to imprisonment for a term of not more than thirty days.

Terms of
licence.

(3) Operators' licences may be issued by the Minister to such persons for such times and upon such terms and conditions and subject to such regulations and restrictions as the Lieutenant-Governor in Council may prescribe. R.S.O. 1937, c. 288, s. 72 (2, 3).

As to
carrying
licences and
production
on demand.

76.—(1) Every operator of a motor vehicle shall carry his licence with him at all times while he is in charge of a motor vehicle and shall produce it when demanded by a constable or by an officer appointed for carrying out the provisions of this Act.

Penalty.

(2) Any person who violates any of the provisions of subsection 1 shall be liable for the first offence to a penalty of not more than \$5; for the second offence to a penalty of not less than \$5 and not more than \$10; and for any subsequent offence to a penalty of not less than \$10 and not more than \$25, and in addition his licence or permit may be suspended for a period of not less than thirty days.

(3) A person convicted of an offence under this Act, if he holds an operator's licence, shall forthwith produce his licence for the purpose of endorsement. Production of licence.

(4) Any person who violates any of the provisions of sub-section 3 shall be liable for the first offence to a penalty of not less than \$5 and not more than \$10; for the second offence to a penalty of not less than \$10 and not more than \$25; and for any subsequent offence to a penalty of not less than \$25 and not more than \$50, and in addition his licence or permit may be suspended for a period of not more than sixty days. R.S.O. 1937, c. 288, s. 73. Penalty.

77. A magistrate or justice of the peace by whom a person is convicted of a violation of this Act, if the person convicted is required to hold an operator's licence and does not hold such licence, may declare him disqualified to hold such a licence for such time as the magistrate or justice of the peace thinks fit and shall so report with the certificate of conviction to the Minister. R.S.O. 1937, c. 288, s. 74. When operator may be disqualified.

78. The provisions of this Part and of subsection 1 of section 21 and any regulations made thereunder shall not apply to residents of the other provinces of Canada who do not reside or carry on business in Ontario for more than six consecutive months in any one year, nor to residents of other countries or states who do not reside in Ontario for more than three months in any one year, provided such persons have complied with the provisions of the law of the province, country or state in which they reside as to the licensing of motor vehicle operators or chauffeurs. 1938, c. 17, s. 16; 1941, c. 22, s. 15. Exemption as to non-residents.

PART XIII

FINANCIAL RESPONSIBILITY OF OWNERS AND DRIVERS

79. In this Part,

Interpretation.

- (a) "authorized insurer" means an insurer duly licensed under *The Insurance Act* to carry on in Ontario the business of automobile insurance; Rev. Stat., c. 183.
- (b) "driver's licence" means an operator's licence or a chauffeur's licence issued pursuant to this Act;
- (c) "motor vehicle", in addition to the meaning given in section 1, includes "trailer", as defined in section 1;

- (d) "proof of financial responsibility" means a certificate of insurance, a bond, or a deposit of money or securities given or made pursuant to section 87;
- (e) "Treasurer" means Treasurer of Ontario;
- (f) "state" means a state of the United States of America or the District of Columbia;
- (g) "Superintendent of Insurance" means Superintendent of Insurance appointed under *The Insurance Act*. R.S.O. 1937, c. 288, s. 76.

Other
remedies
protected.

80. Nothing in this Part shall prevent the plaintiff in an action from proceeding upon any other remedy or security available at law. R.S.O. 1937, c. 288, s. 77 (1).

Licences
suspended
for
convictions.

81.—(1) The driver's licence and owner's permit or permits of every person who has been convicted of, or committed for trial, or has forfeited his bail after having been arrested for any one of the following offences or violations of law:

- (a) any offence for which a penalty is provided in this Act, if injury to or the death of any person or damage to property occurs in connection therewith;
- (b) any offence under this Act if the penalty imposed includes suspension or revocation of the driver's licence or owner's permit; or
- (c) any offence under section 284, 285 or 377 of the *Criminal Code* (Canada) involving the use of a motor vehicle,

R.S.C. 1927,
c. 36.

shall be forthwith suspended by the Registrar, and shall remain so suspended, and shall not at any time thereafter be renewed, nor shall any new driver's licence or owner's permit be thereafter issued to such person, until he has given to the Registrar proof of his financial responsibility. 1947, c. 45, s. 13 (1).

Suspension
of licence
and permit
upon
conviction
of certain
offences.

(2) Where a person pleads guilty to any of the offences mentioned in subsection 1, subsection 1 shall not apply unless such person has been given notice,

- (a) by a printed or written statement upon or accompanying the summons; or
- (b) by the magistrate or judge verbally before accepting the plea,

in the following form or to the like effect:

"The Highway Traffic Act provides that upon conviction of the offence with which you are charged, in the circumstances indicated therein, your driver's licence and owner's permit shall be forthwith suspended by the Minister of Highways." 1946, c. 39, s. 9.

(3) Upon receipt by the Registrar of official notice that the holder of a driver's licence or owner's permit under this Act has been convicted of, or committed for trial, or has forfeited his bail, in any other province or state in respect of an offence, which, if committed in Ontario would have been, in substance and effect, an offence under, or a violation of the provisions of law mentioned in subsection 1, the Registrar shall suspend every driver's licence and owner's permit or permits of such person issued pursuant to this Act, until that person has given proof of financial responsibility in the same manner as if the conviction or committal had been made or the bail forfeited in Ontario. R.S.O. 1937, c. 288, s. 78 (2); 1947, c. 45, s. 13 (2).

Conviction
in other
provinces
or states.

(4) If any person to whom subsection 1 applies is not a resident of Ontario, the privilege of operating a motor vehicle within Ontario, and the privilege of operation within Ontario of a motor vehicle owned by him, is suspended and withdrawn forthwith by virtue of such conviction, committal for trial or forfeiture of bail, until he has given proof of financial responsibility; provided that the magistrate or justice of the peace before whom such person was charged may, in his discretion, by a written permit signed by him, authorize the operation of such motor vehicle to the boundaries of the province by such route and by such person as the permit may describe. R.S.O. 1937, c. 288, s. 78 (3).

Non-
residents.

82.—(1) Subject to section 90, the driver's licence and owner's permit or permits of every person who fails to satisfy a judgment rendered against him by any court in Ontario or in any other province of Canada, which has become final by affirmation on appeal or by expiry without appeal of the time allowed for appeal, for damages on account of injury to or death of any person, or on account of damage to property, occasioned by a motor vehicle, within fifteen days from the date upon which such judgment became final shall be forthwith suspended by the Registrar, upon receiving a certificate of such final judgment from the court in which the same is rendered, and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any new driver's licence or owner's permit be thereafter issued to such person, until such judgment is satisfied or discharged, otherwise than by a discharge in bankruptcy, to the extent for which financial

Licence
suspended
for failure
to pay
judgments.

responsibility is required to be given under section 86, and until such person gives proof of his financial responsibility. R.S.O. 1937, c. 288, s. 79 (1); 1947, c. 45, s. 14.

Reciprocal
effect of
subs. 1
with states
having
similar
legislation.

(2) The Lieutenant-Governor in Council, upon the report of the Minister that a state has enacted legislation similar in effect to subsection 1 and that such legislation extends and applies to judgments rendered and become final against residents of that state by any court of competent jurisdiction in Ontario, may declare that the provisions of subsection 1 shall extend and apply to judgments rendered and become final against residents of Ontario by any court of competent jurisdiction in such state. R.S.O. 1937, c. 288, s. 79 (2); 1946, c. 39, s. 10.

NOTE.—By regulations made under this Act, the provisions of subsection 1 of section 82 extend and apply to judgments rendered and become final against residents of Ontario by any court of competent jurisdiction in the following states:

Alabama;	Missouri;	Pennsylvania;
Colorado;	Montana;	Utah;
Idaho;	Nebraska;	Virginia;
Illinois;	New Jersey;	Washington;
Indiana;	New Mexico;	West Virginia;
Iowa;	New York;	Wisconsin;
Kansas;	North Carolina;	Wyoming;
Kentucky;	North Dakota;	District of
Maryland;	Oklahoma;	Columbia.
Michigan;	Oregon;	

Subsequent
judgments.

(3) If, after such proof of financial responsibility has been given, any other judgment against such person, for any accident which occurred before such proof was furnished, and after the 1st day of September, 1930, is reported to the Registrar, the driver's licence and owner's permit or permits of such person shall again be, and remain, suspended until such judgment is satisfied and discharged, otherwise than by a discharge in bankruptcy, to the extent set out in subsection 1.

Non-
residents.

(4) If any person to whom subsection 1 applies is not a resident of Ontario, the privilege of operating a motor vehicle in Ontario, and the privilege of operation in Ontario of a motor vehicle registered in his name, is suspended and withdrawn forthwith by virtue of such judgment until he has complied with the provisions of subsection 1. R.S.O. 1937, c. 288, s. 79 (3, 4).

Persons
under and
over certain
ages.

83. The Minister may require proof of financial responsibility before issue of an owner's permit or driver's licence, or the renewal thereof, to any person under the age of 21 years or over the age of 65 years. R.S.O. 1937, c. 288, s. 80.

84. The Minister may require proof of financial responsibility from any person where, Persons responsible for accidents.

- (a) in the opinion of the Minister such person is responsible in whole or in part for a motor vehicle accident; or
- (b) having regard to the records of the Department relating to such person, the Minister is of opinion that such requirement is desirable,

and may suspend all owners' permits and drivers' licences in such cases until proof of financial responsibility has been given. 1947, c. 45, s. 15.

85.—(1) An owner's permit and driver's licence, or, in the case of a person not a resident of Ontario, the privilege of operating a motor vehicle in Ontario and the privilege of operation within Ontario of a motor vehicle owned by such non-resident, shall not be suspended or withdrawn under the provisions of this Part if such owner, driver, or non-resident has voluntarily filed or deposited with the Registrar, prior to the offence or accident out of which any conviction arises, proof of financial responsibility which, at the date of such conviction, is valid and sufficient for the requirements of this Part. Voluntary filing of financial responsibility.

(2) The Registrar shall receive and record proof of financial responsibility voluntarily offered, and if any conviction or judgment against such person is thereafter notified to the Registrar which in the absence of such proof of financial responsibility would have caused the suspension of the driver's licence or owner's permit under this Part, the Registrar shall forthwith notify the insurer or surety of such person of the conviction or judgment so reported. R.S.O. 1937, c. 288, s. 82. Registrar may receive proof.

86. Subject to subsection 3 of section 87, proof of financial responsibility shall be given in the following amounts by every driver, and, in the case of an owner, in the said amounts for each motor vehicle registered in his name, by every owner, to whom this Part applies, Amounts and limits of financial responsibility.

- (a) at least \$5,000 (exclusive of interest and costs) against loss or damage resulting from bodily injury to or the death of any one person and, subject to such limit for any one person so injured or killed, at least \$10,000 (exclusive of interest and costs) against loss or damage resulting from bodily injury to or death of two or more persons in any one accident; and

- (b) at least \$1,000 (exclusive of interest and costs) for damage to property, except property carried in or upon the motor vehicle, resulting from any one accident. R.S.O. 1937, c. 288, s. 83.

Proof of
financial
respon-
sibility:

certificates
of
insurance;

87.—(1) Subject to subsection 3, proof of financial responsibility may be given in any one of the following forms:

- (a) the written certificate or certificates, filed with the Registrar, of any authorized insurer that it has issued, to or for the benefit of the person named therein, a motor vehicle liability policy or policies in form hereinafter prescribed, which at the date of the certificate or certificates is in full force and effect, and which designates therein, by explicit description or by other adequate reference, all motor vehicles to which the policy applies, and any such certificate or certificates shall be in the form approved by the Registrar and shall cover all motor vehicles registered in the name of the person furnishing the proof, and the certificate or certificates shall certify that the motor vehicle liability policy or policies therein mentioned shall not be cancelled or expire except upon ten days prior written notice thereof to the Registrar, and until such notice is duly given the certificate or certificates shall be valid, and sufficient to cover the term of any renewal of such motor vehicle liability policy by the insurer, or any renewal or extension of the term of such driver's licence or owner's permit by the Minister;

surety bond;

Rev. Stat.,
c. 183.

- (b) the bond of a guarantee insurance or surety company, duly licensed in Ontario pursuant to *The Insurance Act*, or a bond with personal sureties, approved as adequate security hereunder upon application to a judge of the county or district court of the county or district in which such sureties reside, and the bond shall be in form approved by the Registrar and shall be conditioned upon the payment of the amounts specified in this Part, and shall not be cancelled or expire except after ten days written notice to the Registrar, but not after the happening of the injury or damage secured by the bond as to such accident, injury, or damage, and the bond shall be filed with the Registrar;

money or
securities.

- (c) the certificate of the Treasurer that the person named therein has deposited with him a sum of money or securities for money approved by him in the amount or value of \$11,000 for each motor vehicle registered in the name of such person, and the Treasurer shall

accept any such deposits and issue a certificate therefor if such deposit is accompanied by evidence that there are no unsatisfied executions against the depositor registered in the office of the sheriff for the county or district in which the depositor resides.

(2) The Minister may, in his discretion, at any time require additional proof of financial responsibility to that filed or deposited by any driver or owner pursuant to this Part, and may suspend the driver's licence and owner's permit or permits pending such additional proof. Minister may require additional proof.

(3) In the case of an owner of ten or more motor vehicles to whom this Part applies, proof of financial responsibility in a form and in an amount, not less than \$50,000, satisfactory to the Minister, may be accepted as sufficient for the purposes of this Part. R.S.O. 1937, c. 288, s. 84 (1-3). Fleet of cars.

(4) An owner of a motor vehicle to whom this Part applies who holds a licence in respect of the vehicle under *The Public Vehicles Act* or *The Public Commercial Vehicles Act* and who has on file with the Minister a certificate of insurance in good standing shall not be required to give proof of financial responsibility under this Part in respect of the vehicle. 1948, c. 39, s. 3. Owners of public and public commercial vehicles. Rev. Stat., cc. 322, 304.

(5) A person who is not a resident of Ontario may, for the purposes of this Part, give proof of financial responsibility as provided in subsection 1, or by filing a certificate of insurance in form approved by the Registrar issued by any insurer authorized to transact insurance in the state or province in which such person resides, provided such insurer has filed with the Registrar, in the form prescribed by him, Proof by non-residents.

- (a) a power of attorney authorizing the Registrar to accept service of notice or process for itself and for its insured in any action or proceeding arising out of a motor vehicle accident in Ontario;
- (b) an undertaking to appear in any such action or proceeding of which it has knowledge; and
- (c) an undertaking not to set up as a defence to any claim, action or proceeding under a motor vehicle liability policy issued by it, a defence which might not be set up if the policy had been issued in Ontario in accordance with the law of Ontario relating to motor vehicle liability policies, and to satisfy up to the limits of liability stated in the policy any judgment rendered and become final against it or its insured by a court in Ontario in any such action or proceeding.

Default of insurer.

(6) If an insurer which has filed the documents described in subsection 5 defaults thereunder, certificates of any such insurer shall not thereafter be accepted as proof of financial responsibility under this Part so long as the default continues, and the Registrar shall forthwith notify the superintendent of insurance and the registrar of motor vehicles or other officer or officers, if any, in charge of registration of motor vehicles and the licensing of operators in all provinces and states where the certificates of such insurer are accepted as proof of financial responsibility. R.S.O. 1937, c. 288, s. 84 (4, 5).

Application of security.

88.—(1) The bond filed with the Registrar and the money or securities deposited with the Treasurer shall be held by him in accordance with the provisions of this Part as security for any judgment against the owner or driver filing the bond or making the deposit, in any action arising out of damage caused after the filing or deposit by the operation of a motor vehicle.

Not available to creditors generally.

(2) Money and securities so deposited with the Treasurer shall not be subject to any claim or demand, except an execution on a judgment for damages for personal injuries, death, or injury to property, occurring after such deposit as a result of the operation of a motor vehicle.

Action on security.

(3) If a judgment to which this Part applies is rendered against the principal named in the bond filed with the Registrar, and the judgment is not satisfied within 15 days after it has been rendered, the judgment creditor may, for his own use and benefit, and at his sole expense, bring an action on the bond in the name of the Treasurer against the persons executing the bond. R.S.O. 1937, c. 288, s. 85.

Chauffeurs or members of owner's family.

89. If the Registrar finds that any driver to whom this Part applies was, at the time of the offence for which he was convicted, employed by the owner of the motor vehicle involved therein as chauffeur or motor vehicle operator, whether or not so designated, or was a member of the family or household of the owner, and that there is no motor vehicle registered in Ontario in the name of such driver as an owner, then, if the owner of the motor vehicle submits to the Registrar (who is hereby authorized to accept it) proof of his financial responsibility, as provided by this Part, such chauffeur, operator or other person shall be relieved of the requirement of giving proof of financial responsibility on his own behalf. R.S.O. 1937, c. 288, s. 86.

Payment of judgments in instalments.

90. A judgment debtor to whom this Part applies may, on due notice to the judgment creditor, apply to the court in which the trial judgment was obtained, for the privilege of paying

the judgment in instalments, and the court may, in its discretion, so order, fixing the amounts and times of payment of the instalments, and while the judgment debtor is not in default in payment of such instalments he shall be deemed not in default for the purposes of this Part in payment of the judgment, and upon proof of financial responsibility for future accidents pursuant to this Part, the Minister may restore the driver's licence and owner's permits of the judgment debtor, but such driver's licence and owner's permits shall again be suspended and remain suspended, as provided in section 82, if the Registrar is satisfied of default made by the judgment debtor in compliance with the terms of the court order. R.S.O. 1937, c. 288, s. 87.

91.—(1) It shall be the duty of the clerk or registrar of the court, or of the court where there is no clerk or registrar, to forward to the Registrar a certified copy or certificate in the form prescribed by the Registrar of, Report of convictions, etc. to Registrar.

(a) every judgment which has become final by affirmation upon appeal or by expiry of the time allowed for taking an appeal and is unsatisfied; and

(b) every order committing for trial and every conviction,

to which this Part applies, 15 days after the judgment becomes final or forthwith upon the making of the order or conviction, as the case may be and every such certified copy or certificate shall be *prima facie* evidence of the judgment, order or conviction.

(2) The clerk or official required to send a certified copy or certificate of a judgment shall be entitled to a fee of \$1 for each certified copy or certificate which fee shall be paid by the person for whose benefit the judgment is issued. 1943, c. 10, s. 10. Fee.

(3) If the defendant is not resident in Ontario it shall be the duty of the Registrar to transmit to the registrar of motor vehicles or other officer or officers, if any, in charge of the registration of motor vehicles and the licensing of operators in the province or state in which the defendant resides, a certificate of the order, judgment or conviction. R.S.O. 1937, c. 288, s. 88 (2). Notification in case of non-residents.

92.—(1) The Registrar shall, upon request, furnish to any insurer, surety or other person a certified abstract of the operating record of any person subject to the provisions of this Part, which abstract shall fully designate the motor vehicles, if any, registered in the name of such person, and the record of any conviction of such person for a violation of any Abstract of operating record.

provision of any statute relating to the operation of motor vehicles, or any judgment against such person for any injury or damage caused by such person, according to the records of the Registrar, and if there is no record of any such conviction or judgment in the office of the Registrar, the Registrar shall so certify, and the Registrar shall collect as a fee for each such certificate the sum of \$1.

Particulars
of security
to be
furnished.

(2) The Registrar, upon written request, shall furnish any person who may have been injured in person or property by any motor vehicle with all information of record in his office pertaining to the proof of financial responsibility of any owner or driver of any motor vehicle furnished pursuant to this Part. R.S.O. 1937, c. 288, s. 89.

Return of
permit and
plates when
licence
suspended.

93.—(1) Any owner or driver whose permit or licence has been suspended as herein provided, or whose policy of insurance or surety bond has been cancelled or terminated as herein provided, or who neglects to furnish additional proof of financial responsibility upon the request of the Registrar as herein provided, shall immediately return to the Registrar his driver's licence, his motor vehicle permit or permits, and all licence plates issued thereunder.

Police
officer may
secure
possession.

(2) If any such person fails to return his licence, permits and plates as provided herein, the Registrar may direct any police officer to secure possession thereof and return them to the office of the Registrar.

Penalty.

(3) Any person failing to return his licence, permits and plates when so required, or refusing to deliver the same when requested to do so by the police officer, shall be guilty of an offence and shall be liable to a penalty of not less than \$10 and not more than \$100 for each offence. R.S.O. 1937, c. 288, s. 90.

Transfer of
suspended
permit.

94. If an owner's permit has been suspended under this Part, the permit shall not be transferred nor the motor vehicle in respect of which the permit was issued registered in any other name until the Minister is satisfied that the transfer or registration is proposed in good faith and not for the purpose, or with the effect, of defeating the purposes of this Part. R.S.O. 1937, c. 288, s. 91.

Cancellation
and
return of
security.

95.—(1) The Minister may waive the requirement of filing proof of financial responsibility or may cancel any bond or return any certificate of insurance, or the Treasurer may, at the request of the Minister, return any money or securities deposited pursuant to this Part as proof of financial responsi-

bility at any time after two years from the date upon which such proof was required to be given, provided that the owner or driver on whose behalf such proof was given has not, during the said period, or any two-year period immediately preceding the request, been convicted of any offence mentioned in section 81, and provided that no action for damages is pending and no judgment is outstanding and unsatisfied in respect of personal injury or damage to property resulting from the operation of a motor vehicle, and a statutory declaration of the applicant under this section shall be sufficient evidence of the facts in the absence of evidence to the contrary in the records of the Registrar. R.S.O. 1937, c. 288, s. 92 (1); 1941, c. 22, s. 17; 1948, c. 39, s. 4.

(2) The Minister may direct the return of any bond, money or securities to the person who furnished the same, upon the acceptance and substitution of other adequate proof of financial responsibility pursuant to this Part. Substitution of security.

(3) The Minister may direct the return of any bond, money or securities deposited under this Part to the person who furnished the same at any time after three years from the date of the expiration or surrender of the last owner's permit or driver's licence issued to such person, if no written notice has been received by the Registrar within such period of any action brought against such person in respect of the ownership, maintenance or operation of a motor vehicle, and upon the filing by such person with the Registrar of a statutory declaration that such person no longer resides in Ontario, or that such person had made a *bona fide* sale of any and all motor vehicles owned by him, naming the purchaser thereof, and that he does not intend to own or operate any motor vehicle in Ontario within a period of one or more years. R.S.O. 1937, c. 288, s. 92 (2, 3). Return of security when motor vehicle is sold.

96.—(1) A motor vehicle liability policy referred to in this Part shall be in the form prescribed by *The Insurance Act* and approved thereunder by the Superintendent of Insurance for the purposes of this Part. R.S.O. 1937, c. 288, s. 93 (1); 1941, c. 22, s. 18. Form of policy. Rev. Stat., c. 183.

(2) An insurer which has issued a motor vehicle liability policy shall, as and when the insured may request, deliver to him for filing or file direct with the Registrar a certificate for the purposes of this Part. Filing of certificate.

(3) A certificate filed with the Registrar for the purposes of this Part shall be deemed to be a conclusive admission by the insurer that a policy has been issued in the form prescribed by subsection 1 and in accordance with the terms of the certificate. Certificate conclusive.

Notice of
cancellation
of
insurance.

(4) Every insurer shall notify the Registrar of the cancellation or expiry of any motor vehicle liability policy for which a certificate has been issued to the Registrar under this Part, at least 10 days before the effective date of the cancellation or expiry, and, in the absence of such notice of cancellation or expiry, the policy shall remain in full force and effect.

Notice of
accidents
involving
non-
residents.

(5) Where a person, who is not a resident of Ontario, is a party to an action for damages arising out of a motor vehicle accident in Ontario for which indemnity is provided by a motor vehicle liability policy, the insurer named in the policy shall, as soon as it has knowledge of the action from any source, and whether or not liability under the policy is admitted, notify the Registrar in writing, specifying the date and place of the accident and the names and addresses of the parties to the action and of the insurer, which notification shall be open to inspection by parties to the action.

Refusal of
certificates.

(6) Notwithstanding anything in this Part, the Registrar may decline to accept as proof of financial responsibility the certificates of any insurer which fails to comply with subsection 5. R.S.O. 1937, c. 288, s. 93 (2-6).

PART XIV

UNSATISFIED JUDGMENT FUND

Unsatisfied
Judgment
Fund.

97.—(1) Upon the issue or renewal of a chauffeur's licence or operator's licence, there shall be payable to the Minister by the person to whom the licence or renewal is issued, in addition to the fee prescribed for the licence or renewal, such further fee, referred to in this section as the Unsatisfied Judgment Fund fee, as the Lieutenant-Governor in Council may prescribe and the Unsatisfied Judgment Fund fees shall constitute a fund to be known as the Unsatisfied Judgment Fund.

Amount
of fee.

(2) The Lieutenant-Governor in Council, having regard to the condition of the Fund and the amount paid out of the Fund during any period, may,

- (a) prescribe such Unsatisfied Judgment Fund fee not exceeding \$1 as he may deem adequate; or
- (b) suspend payment of the Unsatisfied Judgment Fund fee for such period as he may prescribe. 1947, c. 45, s. 16 (1), *part.*

98.—(1) Subject to section 99, where a person recovers in any court in Ontario a judgment for damages on account of injury to or the death of any person or damage to property occasioned in Ontario by a motor vehicle owned or operated by the judgment debtor within Ontario, upon the determination of all proceedings including appeals and upon notice to the Minister, such judgment creditor may apply by way of originating notice to a judge of the Supreme Court for an order directing payment of the amount of the judgment or the unsatisfied portion thereof out of the Fund. 1947, c. 45, s. 16 (1), *part*; 1948, c. 39, s. 5 (1); 1950, c. 25, s. 11.

Order
directing
payment of
amount of
judgment.

(2) Upon the hearing of the application the applicant shall show,

Hearing of
application.

- (a) that he has obtained a judgment as set out in subsection 1 stating the amount thereof and the amount owing thereon at the date of the application;
- (b) that he has caused to be issued a writ of *fiery facias* or execution, and that,
 - (i) the sheriff or bailiff has made a return showing that no goods of the judgment debtor liable to be seized in satisfaction of the judgment debt could be found, or
 - (ii) the amount realized on the sale of goods seized, or otherwise realized, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized;
- (c) that he has caused the judgment debtor to be examined, pursuant to the law for that purpose provided, touching his estate and effects and his property and means, and in particular as to whether the judgment debtor is insured under a policy of insurance by the terms of which the insurer is liable to pay in whole or in part the amount of the judgment;
- (d) that he has made exhaustive searches and inquiries to ascertain whether the judgment debtor is possessed of assets, real or personal, liable to be sold or applied in satisfaction of the judgment;
- (e) that, by such searches, inquiries and examination,
 - (i) he has learned of no assets, real or personal, possessed by the judgment debtor and liable to be sold or applied in satisfaction of the judgment debt, or

(ii) he learned of certain assets, describing them, owned by the judgment debtor and liable to be seized or applied in satisfaction of the judgment, and has taken all necessary actions and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and

(f) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a policy of automobile insurance within the meaning of *The Insurance Act* and that no part of the amount sought to be paid out of the Fund is sought in lieu of making a claim or receiving a payment which is payable by reason of the existence of a policy of automobile insurance within the meaning of *The Insurance Act* and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify the insurer in respect of any amount paid or payable by the insurer by reason of the existence of a policy of automobile insurance within the meaning of *The Insurance Act*;

Rev. Stat.,
c. 183.

provided that where the applicant satisfies the judge that it is not possible to comply with one or more of the requirements enumerated in clauses *b*, *c*, *d* and *e* and also satisfies the judge that he has taken all reasonable steps to recover the amount of the judgment or the unsatisfied part thereof and has been unable to make recovery, the judge may dispense with the necessity for complying with such requirements. 1947, c. 45, s. 16 (1), *part*; 1948, c. 39, s. 5 (2).

Minister
may be
heard on
application.

(3) The Minister may appear and be heard on the application and may show cause why the order should not be made. 1947, c. 45, s. 16 (1), *part*.

Order of
judge
directing
payment
from Fund.

(4) If the judge is satisfied,

(a) of the truth of the matters shown by the applicant as required by subsection 2;

(b) that the applicant has taken all reasonable steps to learn what means of satisfying the judgment are possessed by the judgment debtor;

(c) that there is good reason for believing that the judgment debtor,

(i) has no assets liable to be sold or applied in satis-

faction of the judgment or of the balance owing thereon, and

- (ii) is not insured under a policy of insurance by the terms of which the insurer is liable to pay, in whole or in part, the amount of the judgment; and
- (d) that the applicant has fully pursued and exhausted all remedies available to him for recovering compensation for the damages that are the subject of the action in respect of which the judgment is given by,
 - (i) commencing action against all persons against whom the applicant might reasonably be considered as having a cause of action in respect of such damages,
 - (ii) prosecuting every such action in good faith to judgment or dismissal,
 - (iii) taking all reasonable steps available to him to recover upon every judgment so obtained, and
 - (iv) taking all other reasonable steps available to him to recover compensation for such damages,

the judge may make an order directed to the Minister requiring him, subject to subsection 5, to pay from the Fund the amount of the judgment or the balance owing thereon. 1947, c. 45, s. 16 (1), *part*; 1948, c. 39, s. 5 (3).

(5) The Minister shall not pay out of the Fund under an order, Amount of
payments
from Fund.

- (a) more than \$5,000, exclusive of costs, on account of injury to or the death of one person, and subject to such limit for any one person so injured or killed, not more than \$10,000, exclusive of costs, on account of injury to or the death of two or more persons in any one accident; and
- (b) not more than \$1,000, exclusive of costs, for damage to property resulting from any one accident;

provided that where any amount is recovered from any other source in partial discharge of the judgment debt, the maximum amount prescribed in this section shall be reduced by the amount so paid and any amount paid out of the Fund in excess of the amount authorized by this section may be recovered by action brought by the Minister. 1947, c. 45, s. 16 (1), *part*; 1948, c. 39, s. 5 (4).

(6) The Minister shall not pay out of the Fund, costs, Costs. including costs of the application made under this section, of

more than actual disbursements and fees as taxed on a party and party basis. 1947, c. 45, s. 16 (1), *part*.

Idem.

(7) Where, by reason of an action having been maintained in part by an insurer, an order made under this section directs payment out of the Fund of only part of the amount of the judgment obtained in the action, the Minister shall not pay out of the Fund more than that part of the party and party costs of the action which bears the same proportion to the whole of such costs as the part of the judgment directed to be paid out of the Fund bears to the total amount of the judgment. 1949, c. 40, s. 9.

Application
of s. 98.

99.—(1) Section 98 shall not apply in the case of a judgment that has been signed in an action in which,

- (a) the defendant did not enter an appearance; or
- (b) the defendant did not file a statement of defence; or
- (c) the defendant did not appear in person or by counsel at the trial; or
- (d) judgment was signed upon the consent or with the agreement of the defendant,

unless the Minister has been given notice of such failure, consent or agreement and has been afforded an opportunity to take such action as he may deem advisable under subsection 2.

Rights of
Minister.

(2) Where the Minister receives notice under subsection 1, he may, if he deems it advisable, enter an appearance, file a defence, appear by counsel at the trial or take such other action as he may deem appropriate on behalf and in the name of the defendant, and may thereupon, on behalf and in the name of the defendant, conduct his defence, and all acts done in accordance therewith shall be deemed to be the acts of such defendant. 1948, c. 39, s. 6.

Re-opening
pleadings.

(3) Where pleadings have been noted closed, the Minister may, upon giving notice to the registrar, local registrar or clerk of the court that he intends to defend the action on behalf of and in the name of the defendant, re-open the pleadings upon praecipe. 1949, c. 40, s. 10.

Assignment
of judgment
to Minister.

100.—(1) The Minister shall not pay from the Fund any sum in compliance with an order made under section 98 until the judgment creditor assigns the judgment to him. 1947, c. 45, s. 16 (1), *part*.

(2) Upon lodging a copy of the assignment of judgment, Lodging with court. certified by the Registrar of Motor Vehicles to be a true copy, with the registrar, local registrar or clerk, as the case may be, of the court in which the judgment was obtained, the Minister shall, to the extent of the amount of the assignment, be deemed to be the judgment creditor.

(3) Where execution is issued in the name of the judgment creditor and a copy of the assignment of judgment certified Lodging with sheriff. as prescribed in subsection 2 is lodged with the sheriff having the writ of execution, the provisions of subsection 2 shall apply *mutatis mutandis*. 1949, c. 40, s. 11.

101. Where the chauffeur's licence or operator's licence Cancellation or suspension of licence. of any person, or the owner's permit of a motor vehicle registered in his name, has been suspended or cancelled under this Act, and the Minister has paid out of the Fund any amount in or towards satisfaction of a judgment or costs, or both, obtained against that person, the cancellation or suspension shall not be removed, nor the licence or permit restored, nor shall any new licence or permit be issued to such person until he has,

- (a) repaid in full to the Fund the amount paid out together with interest thereon at four per cent per annum from the date of such payment; and
- (b) filed proof of his financial responsibility as required by Part XIII. 1947, c. 45, s. 16 (1), *part*.

102.—(1) Where the death of or personal injury to any person is occasioned in Ontario by a motor vehicle but the identity of the motor vehicle and of the driver and owner thereof cannot be established, Where identity of vehicle cannot be established. any person who would have a cause of action against the owner or driver in respect of such death or personal injury may, upon notice to the Registrar of Motor Vehicles, apply by way of originating notice,

- (a) to a judge or local judge of the Supreme Court for an order permitting him to bring an action against the Registrar in the Supreme Court; or
- (b) to a judge of a county or district court for an order permitting him to bring an action against the Registrar in such court or in a division court of the same county or district. 1947, c. 45, s. 16 (1), *part*; 1949, c. 40, s. 12 (1).

(2) Where the judge is satisfied,

- (a) that the applicant would have a cause of action Order for action against Registrar. against the owner or driver of the motor vehicle in

respect of the death or personal injury occasioned by the motor vehicle;

- (b) that all reasonable efforts have been made to ascertain the identity of the motor vehicle and of the owner and driver thereof;
- (c) that the identity of the motor vehicle and the owner and driver thereof cannot be established; and
- (d) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by reason of the existence of a policy of automobile insurance within the meaning of *The Insurance Act* and that no part of the amount sought to be recovered in the intended action is sought in lieu of making a claim or receiving a payment which is payable by reason of the existence of a policy of automobile insurance within the meaning of *The Insurance Act* and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify the insurer in respect of any amount paid or payable by it by reason of the existence of a policy of automobile insurance within the meaning of *The Insurance Act*,

Rev. Stat.,
c. 183.

he may make an order permitting the applicant to bring an action against the Registrar. 1947, c. 45, s. 16 (1), *part*; 1948, c. 39, s. 7 (1); 1949, c. 40, s. 12 (2).

Where
owner
known.

(3) Where the death or personal injury is occasioned at a time when the motor vehicle is without the owner's consent in the possession of some person other than the owner or his chauffeur, the application shall be disposed of in the same manner as though the identity of the owner had not been established. 1948, c. 39, s. 7 (2); 1949, c. 40, s. 12 (3).

Exception to
section 61.

103.—(1) Where an action in respect of the death of or personal injury to any person occasioned in Ontario by a motor vehicle has been dismissed and the judge in dismissing such action has stated in writing that such death or personal injury was occasioned by a motor vehicle,

- (a) the identity of which and of the owner and driver of which has not been established; or
- (b) at a time when such motor vehicle was without the consent of the owner in the possession of some person other than the owner or his chauffeur and the identity of the driver has not been established,

the provisions of section 102 shall be available for a period of three months from the date of such dismissal, notwithstanding the provisions of section 61.

(2) Where, pursuant to subsection 1, an application is made under section 102, the applicant shall not, by reason of subsection 1, be relieved of establishing proof of any of the matters set out in subsection 2 of section 102. 1950, c. 25, s. 12. Proof required.

104.—(1) In an action brought under section 102 the Registrar shall for all purposes of the action be deemed to be the defendant. 1947, c. 45, s. 16 (1), *part*. When Registrar deemed defendant.

(2) The Registrar may deny generally the allegations contained in the statement of claim and shall not be required to set forth the facts upon which he relies. 1949, c. 40, s. 13. General denial.

105.—(1) Where an action has been commenced in respect of the death of or injury to any person occasioned in Ontario by a motor vehicle, an application may be made by the plaintiff to add the Registrar as a defendant and the provisions of sections 102 and 104 shall apply *mutatis mutandis*. Application to add Registrar as defendant.

(2) This section shall be deemed not to derogate from the right of any party to an action to add or join any person as a party to the action in accordance with the practice of the court in which the action is pending. 1948, c. 39, s. 8. Other rights not affected.

106. A judgment against the Registrar shall not include any amount for compensation or indemnity for damages in respect of which the plaintiff has received or is entitled to receive compensation or indemnity from any person other than the driver or owner of the motor vehicle which occasioned the personal injury or death. 1949, c. 40, s. 14. What judgment not to include.

107.—(1) Where judgment is obtained against the Registrar in an action brought under section 102 upon the determination of all proceedings including appeals the Minister may, subject to subsection 2, pay out of the Fund to the plaintiff in the action the amount thereof. Where judgment obtained against Registrar.

(2) The Minister shall not pay out of the Fund under any judgment, more than \$5,000, exclusive of costs, on account of injury to or the death of one person, and subject to such limit for any one person so injured or killed, not more than \$10,000, exclusive of costs, on account of injury to or the death of two or more persons in any one accident. Amount of payment out of Fund.

Costs.

(3) The Minister shall not pay out of the Fund, costs, including costs of the application made under section 102, of more than actual disbursements and fees as taxed on a party and party basis. 1947, c. 45, s. 16 (1), *part*.

Order of
Supreme
Court as
to owner
or driver.

108.—(1) Where judgment has been obtained against the Registrar in an action brought under section 102, the Registrar may at any time thereafter, by originating notice, apply,

- (a) where judgment has been obtained in the Supreme Court, to a judge or local judge thereof;
- (b) where judgment has been obtained in a county or district court, to a judge thereof; and
- (c) where judgment has been obtained in a division court of a county or district, to a judge of the county or district court of the county or district,

for an order declaring that any person was, at the time of the accident, the owner or driver of the motor vehicle which occasioned the death or injury in respect of which the judgment was obtained.

Owner or
driver
defendant in
action.

(2) Upon the making of an order declaring that any person was the owner or driver of a motor vehicle,

- (a) such person shall for the purposes of this Act be deemed to be the defendant in the action in which judgment was given against the Registrar, and the judgment against the Registrar shall be deemed to be a judgment against such person; and
- (b) the Minister shall be deemed to have a judgment against such person for the amount of all moneys paid out of the Fund in respect of the judgment and shall accordingly have all the rights of a judgment creditor including the right to recover any moneys which would have been payable in respect of the death or injury under any policy of insurance which was in force at the time of the accident. 1947, c. 45, s. 16 (1), *part*.

Where
owner
known.

(3) Where the death or injury was occasioned at a time when the motor vehicle was without the owner's consent in the possession of some person other than the owner or his chauffeur, the application shall be disposed of in the same manner as though the identity of the owner had not been established. 1948, c. 39, s. 9.

109. The practice and procedure of the Supreme Court Practice and procedure. or the court in which the application or action is brought, including the right of appeal and the practice and procedure relating to appeals, shall apply to an application or action brought under this Part. 1947, c. 45, s. 16 (1), *part*.

PART XV

ACCIDENT REPORTING, STATISTICS AND RATING

110.—(1) Every person in charge of a motor vehicle who Duty to report accident. is directly or indirectly involved in an accident shall, if the accident results in personal injuries, or in damage to property apparently exceeding \$50, report the accident forthwith to the nearest provincial or municipal police officer, and furnish him with such information or written statement concerning the accident as may be required by the officer or by the Registrar.

(2) Where such person is physically incapable of making a Where person unable to report. report and there is another occupant of the motor vehicle, such occupant shall make the report.

(3) A police officer receiving a report of an accident, as Duty of police officer. required by this section, shall secure from the person making the report, or by other inquiries where necessary, such particulars of the accident, the persons involved, the extent of the personal injuries or property damage, if any, and such other information as may be necessary to complete a written report concerning the accident to the Registrar.

(4) The Registrar may require any person involved in an Registrar may require additional information. accident, or having knowledge of an accident, the parties thereto, or any personal injuries or property damage resulting therefrom, to furnish, and any police officer to secure, such additional information and make such supplementary reports of the accident as he may deem necessary to complete his records, and to establish, as far as possible, the causes of the accident, the persons responsible, and the extent of the personal injuries and property damage, if any, resulting therefrom. R.S.O. 1937, c. 288, s. 94 (1-4).

(5) Any written reports or statements made or furnished Reports and statements without prejudice. under this section shall be without prejudice, shall be for the information of the Registrar, and shall not be open to public inspection, and the fact that such reports and statements have been so made or furnished shall be admissible in evidence solely to prove compliance with this section, and no such reports or statements, or any parts thereof or statement contained therein, shall be admissible in evidence for any other

purpose in any trial arising out of a motor vehicle accident. R.S.O. 1937, c. 288, s. 94 (5); 1938, c. 17, s. 20.

Penalty.

(6) Any person who fails to report or furnish any information or written statement required by this section shall be liable to a penalty of not less than \$10 and not more than \$50, and in addition the Minister may suspend the operator's or chauffeur's licence and owner's permit or permits of any such persons. R.S.O. 1937, c. 288, s. 94 (6).

Notification of damage.

111.—(1) Every person who, as a result of an accident or otherwise, operates or drives any vehicle or leads, rides or drives any animal upon the unpaved portion of any highway and thereby damages any shrub, tree, pole, light, sign, sod or other property upon the highway shall forthwith report such damage to a police officer or constable or to the Registrar.

Penalty for failure to notify of damage.

(2) Any person who violates the provisions of subsection 1 shall be liable for the first offence to a penalty of not more than \$10; for a second offence to a penalty of not more than \$20; for a third offence to a penalty of not more than \$30; and for any subsequent offence to a penalty of not more than \$50. 1941, c. 22, s. 19.

Reports by coroners.

112.—(1) Every coroner who investigates, and every Crown attorney and police officer having knowledge of a fatal accident in which a motor vehicle is involved, shall secure such particulars of the accident, the persons involved, and other information as may be necessary to complete a written report to the Registrar on the forms prescribed for that purpose, and shall transmit the report forthwith to the Registrar.

Reports re statistics and traffic control.

(2) Every provincial or municipal official or employee, hospital, charitable institution, insurer, or other person or organization shall furnish to the Registrar such reports and other information relating to motor vehicle accident statistics and traffic control generally, as may be required by the regulations.

Compensation may be allowed.

(3) The Lieutenant-Governor in Council, by regulation, may allow any person or organization making reports or furnishing information under this section, such compensation for so doing as may be deemed proper. R.S.O. 1937, c. 288, s. 95.

Duties of Registrar, supply of accident report forms;

113. The Registrar shall,

- (a) prepare and supply to police officers and other persons and organizations, blank forms approved by the Minister for accident and other reports which shall call for such particulars concerning accidents, the per-

son involved, and the extent of the personal injuries and property damage, if any, resulting therefrom, and such other information as may be required by the regulations;

- (b) make such investigation of, and call for such written reports concerning, motor vehicle accidents, traffic conditions, and other matters, as he may deem necessary and proper, and for that purpose may require the assistance of any provincial or municipal police officer; investigation of accidents;
- (c) keep the following records: keeping of records;
- (i) a record of all motor vehicle accidents in Ontario, reported to him or concerning which he procures information,
 - (ii) a record of all convictions for offences under this Act or under the provisions of the *Criminal Code* (Canada) relating to driving on highways, reported to him pursuant to section 65, and of such other convictions as he may deem proper, R.S.C. 1927, c. 36.
 - (iii) a record of all drivers' licences and owners' permits issued, suspended, revoked, cancelled or revived under this Act,
 - (iv) a record of all unsatisfied judgments rendered against persons holding owners' permits or drivers' licences under this Act, or non-residents reported to him pursuant to this Act,
 - (v) a record of all persons required to show evidence of financial responsibility pursuant to the provisions of Part XIII,
 - (vi) an operating record of every chauffeur and operator, which record shall show all reported convictions of such chauffeur or operator for a violation of any provision of any statute relating to the operation of motor vehicles, and all reported unsatisfied judgments against such person for any injury or damage caused by such person while operating a motor vehicle and all accidents in which the records of the Registrar indicate such chauffeur or operator has been involved, and such other information as the Registrar may deem proper, and
 - (vii) such other records as he may be directed to keep by the Minister;

accident and
traffic
statistics;

(d) develop adequate uniform methods of accident and traffic statistics, and study accident causes and trends, traffic problems, and regulations;

annual
report for
Minister.

(e) prepare for the Minister an annual report showing the results of such reporting, collection, analysis and study, and embodying his recommendations for the prevention of motor vehicle accidents and the solution of traffic problems, and such report shall be printed and published forthwith upon completion. R.S.O. 1937, c. 288, s. 96.

SCHEDULE

(Section 66 (2))

CERTIFICATE OF JUSTICE

I, (*name of Justice*), a Justice of the Peace in and for the county of hereby certify:.....

1. That (*name of defendant*), of the..... of..... in the county of..... (*occupation*), this day appeared before me and produced to me a summons issued by (*name of Justice issuing summons*), a Justice of the Peace in and for the county of....., for an offence against *The Highway Traffic Act*, said to have been committed with respect to a car bearing the official number plate number..... for this year, said offence being alleged to have been committed on the..... of..... in the county of..... on the..... day of.....

2. That the said (*name of defendant*) has deposed before me that neither he nor his motor vehicle was at the said place on the said..... day of....., 19....., and that the summons must have been issued against him through an error of the informant as to the number on the official number plate, and his testimony in this respect has been corroborated by the testimony of two credible witnesses, namely (*here insert the names of two witnesses*).

3. The depositions of the said defendant and of the witnesses referred to in paragraph 2 of this certificate are attached hereto.

4. That I am satisfied of the truth of the testimony given before me this day by (*name of defendant and two witnesses*), and give this certificate in pursuance of subsection 2 of section 66 of *The Highway Traffic Act*.

Dated at..... this..... day of 19.....

.....J.P.

(NOTE.—Attach depositions of defendant and witnesses to this certificate.)

R.S.O. 1937, c. 288, Sched. A.

CHAPTER 168

The Homes for the Aged Act**1. In this Act,**

Interpretation.

- (a) "Minister" means Minister of Public Welfare;
- (b) "district" means territorial district;
- (c) "municipality" means city, county or separated town, but in a territorial district municipality means city, town, village or township;
- (d) "board" means board of management. 1949, c. 41, s. 1.

2.—(1) Except as otherwise provided, every municipality ^{Homes in} not in a district shall establish, erect and maintain to the ^{counties, etc.} satisfaction of the Minister, a home for the aged.

(2) In lieu of establishing separate homes for the aged, ^{Joint homes.} the councils of two or three contiguous municipalities not in a district may, with the approval in writing of the Minister, enter into an agreement for the establishment, erection and maintenance of, and may establish, erect and maintain a joint home for the aged. 1949, c. 41, s. 2.

3.—(1) When a by-law authorizing the same has been ^{Homes in} passed in a majority of the municipalities in any district, ^{districts.} a home for the aged shall be established, erected and maintained by all the municipalities in the district.

(2) When by-laws authorizing the same have been passed ^{Joint homes.} in a majority of the municipalities in two or more contiguous districts a joint home for the aged may be established, erected and maintained by all the municipalities in such contiguous districts.

(3) When by-laws under this section have been passed, ^{Transmission} certified copies thereof shall be transmitted forthwith to the ^{of by-laws.} Minister.

(4) The Lieutenant-Governor in Council may appoint a ^{How} board which shall be a corporation and which shall consist of ^{composed.} five persons resident in the district, and in the case of contiguous districts agreeing to join in a joint home for the aged

the board shall consist of three persons resident in each of the districts.

Site for home.

(5) The board shall select the site for the home for the aged.

Powers of board.

(6) The board shall have charge of the home for the aged. 1949, c. 41, s. 3.

Site and plans, approval of;

4.—(1) A home for the aged shall not be erected until the site and plans of the building have been approved by the Minister.

not to be changed.

(2) There shall be no change in site and no sale or disposal of any portion thereof and no structural alteration in the building without the approval of the Minister. 1949, c. 41, s. 4.

Agreements with contiguous municipalities for care of persons.

5. Notwithstanding sections 2 and 3 the council of any municipality not having a home for the aged or a joint home for the aged may, with the approval of the Minister, enter into an agreement with the council of any municipality having a home for the aged or the councils of any municipalities having a joint home for the aged or the board of any home for the aged in a district, respecting the admission thereto and the maintenance therein of residents of the municipality coming within the classes of persons mentioned in section 11. 1949, c. 41, s. 5.

Appointment of superintendents.

6.—(1) The council of a municipality that establishes, erects and maintains a home for the aged shall, with the approval of the Lieutenant-Governor in Council, appoint a superintendent therefor.

Idem.

(2) Where a joint home for the aged is established, erected and maintained, or where a home for the aged is established, erected and maintained in a district, the board shall, with the approval of the Lieutenant-Governor in Council, appoint a superintendent therefor.

Appointment of staff.

(3) The council of the municipality having a home for the aged or the board of a home for the aged in a district shall appoint such staff as the superintendent may require for the due carrying out of his duties. 1949, c. 41, s. 6.

Agreements for extending sewerage system to homes for the aged.

7.—(1) The council of a municipality having a home for the aged or the board of a home for the aged in a district may enter into agreements with the council of any municipality for connecting the home for the aged with the sewerage system of such municipality.

(2) The council of a municipality having a home for the aged or the board of a home for the aged in a district may enter into agreements with The Hydro-Electric Power Commission of Ontario or with the council of any municipality or person owning or operating a waterworks system, or works for the production and supply of electricity for light, heat or power, for the supply of water for domestic purposes and for fire protection or of electricity for light, heat or power purposes at the home for the aged.

Contracts for supplying water, electric light and power.

(3) For the purpose of connecting such home for the aged with any such system or works, any lands or highways may be entered upon, passed over or dug up, sewers constructed, pipes laid down, poles or wires put in place and all work done in or upon such lands and highways as may be necessary, due compensation being made to the owners thereof as provided by *The Municipal Act*.

Power to carry necessary works over intervening lands.

Rev. Stat., c. 243.

(4) Where two or more municipalities have established a joint home for the aged, they shall have, in respect of such home, all the powers conferred by this section upon the council of a municipality or board. 1949, c. 41, s. 7.

Powers of municipalities, acting jointly.

8. Subject to the approval of the Ontario Municipal Board and without the assent of the electors, any municipality may issue debentures for raising such sums as may be necessary for the purchase of a site or for the erection of buildings for a home for the aged, or for the purchase of land to be used in connection therewith, or for any addition to or improvement of such buildings, or for the purpose of any system or works authorized by section 7. 1949, c. 41, s. 8; 1950, c. 79, s. 9 (1).

Debentures.

9.—(1) The council of a municipality having a home for the aged or the board of a home for the aged in a district shall provide such equipment and materials as will enable the residents of the home for the aged to engage in handicrafts and other such occupations.

Equipment, etc.

(2) Upon a legally qualified medical practitioner certifying that any resident of a home for the aged is physically able to engage in household, farm or other work in or about the home for the aged, the superintendent thereof may encourage the resident to engage in such work.

Work.

(3) Any magistrate may, by writing under his hand, commit any person who is over sixty years of age and who is unable to care properly for himself to a home for the aged.

Committal to home by magistrate.

(4) Any person coming within any of the classes mentioned in section 11 may be admitted to a home for the aged by the superintendent upon receipt of,

Requirement for admission.

- (a) an authorization in the prescribed form signed by the head of a municipality, or, where there is a welfare unit, by the administrator, or, in a district where there is no welfare unit and where the person resides in unorganized territory, by the provincial welfare administrator of the district;
- (b) an application in the prescribed form, signed by the person to be admitted;
- (c) a statement in the prescribed form, signed by the welfare officer of the municipality or district; and
- (d) a statement in the prescribed form, signed by a legally qualified medical practitioner designated by the municipality having the home for the aged or board of a home for the aged in a district, as the physician for the home for the aged. 1949, c. 41, s. 9.

Reimbursement for maintenance cost.

10.—(1) An applicant for admission to a home for the aged or a resident therein or any person on his behalf may reimburse the municipality or the board, if the home for the aged is in a district, in whole or in part for his maintenance.

Recovery of maintenance cost.

(2) Any municipality having a home for the aged or the board of a home for the aged in a district shall be entitled to recover out of the estate of any deceased resident of the home, as a debt due by the resident to such municipality or board, the net cost of the maintenance of the resident while he resided in the home. 1949, c. 41, s. 10.

Who may be admitted.

11. The classes of persons who may be admitted to a home for the aged shall be,

- (a) anyone over the age of sixty years who is incapable of supporting himself, or unable to care properly for himself;
- (b) anyone who is mentally incompetent and ineligible for committal to an institution under *The Mental Hospitals Act*, who requires care, supervision and control for his protection;
- (c) anyone over the age of sixty years who is confined to bed but does not require care in a public hospital or hospital for incurables; or
- (d) anyone under the age of sixty years who because of special circumstances cannot be cared for adequately elsewhere when his admission has been approved by the Minister. 1949, c. 41, s. 11.

Rev. Stat., c. 229.

12.—(1) For the purposes of this Act an applicant for ^{Residence.} admission to a home for the aged shall be deemed to be a resident of a municipality if he has resided therein for a period of twelve consecutive months.

(2) If for any cause a person was deprived of his liberty ^{Idem.} the period of detention shall not be counted in determining the period of residence under subsection 1.

(3) If a person was absent due to seasonal employment for ^{Idem.} a period of not more than six months in any year, that period shall not be counted in determining the period of residence under subsection 1. 1949, c. 41, s. 12.

13.—(1) The cost of establishing, erecting and maintaining a home for the aged in a district shall be defrayed by the ^{Cost of homes in districts.} municipalities in the district in proportion to the amount of their assessments according to the last revised assessment rolls.

(2) The Lieutenant-Governor in Council may direct payment out of the Consolidated Revenue Fund of such amount to defray the cost of establishing and erecting a home for the aged in a district as he may determine in accordance with the regulations and based upon the proportion of such cost that is allocated to the unorganized portions of the district. ^{Provincial subsidy.}

(3) The board shall apportion the amount that it estimates will be required to establish and erect a new home for the aged or an addition to or extension of an existing home for the aged among the municipalities in the district and notify the clerk of each such municipality of the amount to be provided and each such municipality shall raise the sum so required to be provided. ^{Raising of estimated amounts.}

(4) The board shall in each year apportion the amount that it estimates will be required to defray the expenditures for that year among the municipalities in the district, and shall on or before the 31st day of January notify the clerk of each such municipality of the amount to be provided and each such municipality shall include the amount in its estimates for the then current year and levy and collect the amount in like manner as taxes are levied and collected and shall pay the amount to the board on demand. 1949, c. 41, s. 13. ^{General operating expenses.}

14.—(1) When the Minister has approved the plans for a new building to be used as a home for the aged or for an addition to or an extension of an existing home for the aged, the Lieutenant-Governor in Council may direct payment out of the Consolidated Revenue Fund to the municipality or ^{Provincial subsidy on new buildings, etc.}

board, as the case may be, responsible for the home, of an amount not exceeding fifty per cent of the cost thereof to the municipality, or the municipalities in the district.

When payable.

(2) Payments under subsection 1 may be made either when the home for the aged or the addition or extension is completed and ready for occupancy or from time to time during the construction thereof as may be deemed expedient. 1949, c. 41, s. 14.

Provincial subsidy on operating costs, in counties;

15.—(1) There shall be paid out of such moneys as may be voted therefor by the Legislature to every municipality having a home for the aged an amount equal to one-half the amount paid out by the municipality for the operation and maintenance of the home computed in the manner prescribed by the regulations, except that any amount otherwise payable to a county under this subsection shall be paid to each municipality forming part of the county in the proportion that the equalized assessment of the municipality bears to the total equalized assessment of the county.

in districts.

(2) There shall be paid out of such moneys as may be voted therefor by the Legislature to the municipalities in a district that has a home for the aged an amount equal to one-half the amount paid out by the board having charge of the home for its operation and maintenance computed in the manner prescribed by the regulations, and the amount that shall be paid to each municipality shall be in the same proportion as the contributions of the municipality to the home bears to the total of the contributions made by all municipalities in the district. 1950, c. 79, s. 9 (2).

Provincial subsidy for residents of unorganized territory.

16. There shall be paid out of such moneys as may be voted therefor by the Legislature to every municipality having a home for the aged and every board of a home for the aged in a district an amount per day computed in the manner prescribed by the regulations as the cost of maintenance for each person whose residence before admission to the home for the aged was in unorganized territory. 1949, c. 41, s. 16.

Regulations.

17. The Lieutenant-Governor in Council may make regulations,

- (a) prescribing the manner of establishing boards;
- (b) governing the qualifications of superintendents and members of staffs of homes for the aged and prescribing their powers and duties;
- (c) prescribing rules governing homes for the aged, the residents therein and the staffs thereof;

- (d) prescribing the records that shall be kept under this Act and prescribing the returns that shall be made to the Minister;
 - (e) designating the medical services that shall be provided – for residents of homes for the aged;
 - (f) prescribing the manner of computing the cost of maintenance of homes for the aged;
 - (g) prescribing the manner of computing the proportion of the cost of construction of homes for the aged in districts which shall be allocated to the unorganized portions of the districts;
 - (h) providing for the admission to homes for the aged of residents of unorganized territory and prescribing the manner of computing the cost of maintenance of such persons in homes for the aged;
 - (i) prescribing the forms to be used under this Act;
 - (j) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1949, c. 41, s. 17.
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CHAPTER 169

The Horticultural Societies Act

1. In this Act,

Interpretation.

- (a) "board" means board of directors elected under this Act;
- (b) "Department" means Department of Agriculture;
- (c) "Minister" means Minister of Agriculture;
- (d) "society" means any horticultural society organized under this Act or under any former Act having a similar purpose;
- (e) "Superintendent" means Superintendent of Horticultural Societies. 1938, c. 16, s. 2.

2. The Minister may decide all matters of doubt or dispute arising in the operation or construction of this Act and his decision shall be final. 1938, c. 16, s. 3.

Minister to decide matters of dispute.

3.—(1) A society may be organized in any city, town, township or village, or in a police village having a population of not less than 200, or in any two of them that adjoin each other.

Where societies may be organized.

(2) In a city having a population of not less than 100,000 there may be two societies and for each additional 100,000 of population there may be an additional society. 1938, c. 16, s. 4.

Additional societies.

4. The mode of organization of a society shall be as follows:

Mode of organization.

1. An agreement in the form prescribed by the Minister shall be signed by the persons who desire to organize a society and who are resident in the municipality or municipalities in which the society is to be organized.

Agreement.

2. In the case of a city having a population of not less than 30,000 the number of persons signing the agreement shall be at least 125; in the case of a city having a population of less than 30,000 the number shall be at least 100; in the case of a town having a population of not less than 2,000 the number

Signatories to agreement.

shall be at least 60; and in the case of a town having a population of less than 2,000 and a township, village or police village the number shall be at least 25; provided that for the purposes of this paragraph, where a society is to be organized in two adjoining municipalities the society shall be deemed to be in the larger of such municipalities.

Fee payable
by signa-
tores.

3. Every person who signs the agreement shall pay to the person having charge thereof the sum of \$1 and all such sums shall become the property of the society upon its organization, and where no society is organized the sums shall be repaid to the persons entitled thereto.

Organiza-
tion
meeting,
call;

4. Within two months after the date of the first signature to the agreement the agreement shall be transmitted to the Superintendent who may, with the approval of the Minister, authorize any person to call a meeting for the organization of a society.

when to be
held;

5. The organization meeting shall be held during the month of January or at such other time as the Superintendent may authorize, upon at least one week's notice published in a newspaper having a general circulation in the municipality.

quorum.

6. At the organization meeting and at every regular meeting of a society, 10 members shall constitute a quorum.

President,
vice-
presidents,
auditors,
directors.

7. At the organization meeting there shall be elected a president, a first vice-president, a second vice-president and two auditors who shall hold office until the next annual meeting, and ten directors, five of whom shall hold office until the next annual meeting and five of whom shall hold office until the next following annual meeting, provided that where any officer or director so elected has not paid the sum of \$1 as provided by paragraph 3 he shall pay such sum to the treasurer or secretary-treasurer within two weeks of the election.

Board,
composi-
tion of.

8. The board shall be composed of the president, first vice-president, second vice-president and the ten directors.

Secretary
and treas-
urer.

9. The board, from among themselves or otherwise, shall appoint a secretary and a treasurer, or a secretary-treasurer, who shall remain in office during pleasure, and the secretary or secretary-treasurer shall be a member of every committee that may be appointed by the board.

Bond to be
furnished by
treasurer.

10. The board may require the treasurer or secretary-treasurer to furnish such bond as may be deemed necessary to ensure the faithful performance of his duties and the proper administration of all funds belonging to the society coming into his hands and where no such bond is required by the board,

every member of the board shall be personally liable for all funds belonging to the society that come into the hands of the treasurer.

11. A report of the organization meeting, certified by the president, the secretary and the person calling the meeting, containing a statement of the number of members and a list of the officers and directors elected and appointed, together with their addresses, shall be sent to the Superintendent by the secretary within one week after the holding of the meeting. 1938, c. 16, s. 5. Report of organization meeting.

5. Upon the receipt of such report the Superintendent, with the approval of the Minister, may declare the society to be a society within the meaning of this Act. 1938, c. 16, s. 6. Declaration of society.

6. Subject to the approval of the Minister any two or more societies may combine to form one society on such terms and conditions as the Minister may prescribe. 1938, c. 16, s. 7. Combination of societies.

7. Upon the petition of not less than 25 members of a society the Minister may dissolve the society or may constitute two or more societies upon such terms and conditions as he may deem proper. 1938, c. 16, s. 8. Dissolution of society upon petition.

8.—(1) Every person of the full age of 16 years or over shall be entitled to membership in a society. Persons entitled to membership.

(2) Subject to the by-laws and regulations of a society, a partnership or incorporated company may become a member thereof upon payment of the prescribed fee, but in every such case the partnership or company shall delegate one person to exercise the privileges of membership in the society. Partnership or company may be member.

(3) In every society there shall be an annual membership fee of not less than 50 cents. Membership fee.

(4) The fiscal year of every society shall be the calendar year unless the Minister otherwise authorizes. Fiscal year.

(5) Every member in good standing of a society shall be entitled to vote on all questions coming before a regular or special meeting of the society. 1938, c. 16, s. 9. Voting of members.

9.—(1) The object of a society shall be to encourage interest and improvement in horticulture, Objects.

(a) by holding meetings for instruction and discussion on subjects connected with the theory and practice of horticulture;

- (b) by encouraging the improvement of home and public grounds by the planting of trees, shrubs and flowers, and by otherwise promoting out-door art and public beautification;
- (c) by interesting juveniles and others in the study of horticulture by the holding of contests and competitions and by such other means as may be considered proper;
- (d) by holding exhibitions and awarding premiums for the production of vegetables, plants, flowers, fruits, trees and shrubs;
- (e) by the distribution of seeds, plants, bulbs, flowers, trees and shrubs in ways calculated to create an interest in horticulture; and
- (f) by promoting the circulation of horticultural periodicals.

Expenditure
of annual
receipts.

(2) A society shall not expend more than one-half of its total annual receipts, other than grants or donations made for specific purposes, upon any one of the projects enumerated in subsection 1, except for the purposes of planting trees, shrubs and plants on public grounds and the promotion of out-door art and public beautification.

Expenditure
of funds.

(3) None of the funds of a society shall be expended for any purpose not indicated in subsection 1, and a society that violates any of the provisions of this section shall not be entitled to the Government grant for the year in which the violation occurs, or where the grant for such year has already been paid, for the next following year, subject however to any direction that the Minister may make. 1938, c. 16, s. 10.

Annual
meeting;

10.—(1) Every society shall hold a meeting annually during the month of January or such other month as the Superintendent may approve at such time and place as the board may determine.

notice;

(2) At least one week's notice of every annual meeting shall be given by the publication of a notice of the meeting in a newspaper having a general circulation in the municipality or by mailing a notice of the meeting to each member of the society at the address furnished to the secretary. 1938, c. 16, s. 11.

Procedure.

11. At every annual meeting the board shall present a report of the activities and accomplishments of the society

during the preceding year and the financial statement for the preceding year certified by the auditors on the form prescribed by the Minister, and the officers and other members of the board shall be elected and appointed in the manner provided by section 4, provided that five directors shall be elected at each annual meeting. 1938, c. 16, s. 12.

12.—(1) In the event of failure to hold the annual meeting Dissolution. in accordance with this Act or in the event of the number of members of a society on the 1st day of July in any year being less than the number required for organization, the society shall not be entitled to receive any further Government grant and shall be deemed to be dissolved, subject always to any direction of the Minister, provided that the persons comprising the board during the last year of the existence of the society shall be trustees of the assets of the society and shall deliver to the Superintendent a statement of its assets and liabilities.

(2) The Superintendent may direct the members of the board to pay the debts of the society out of the moneys and other assets remaining in their hands and liquidate any of the assets for such purpose and may direct such members to dispose of any moneys or other assets then remaining in such manner as he may determine. 1938, c. 16, s. 13. Payment of debts and disposal of surplus moneys.

13.—(1) A statement of officers and members and a copy Statement to be sent to Minister. of the financial statement in the form prescribed by the Minister and certified by the president, secretary-treasurer, or secretary and treasurer, and auditors to be true copies shall be forwarded to the Minister within two weeks of the holding of the annual meeting.

(2) The Minister may at any time require a society or any officer of a society to furnish such information regarding the Minister may require information. society as he may deem necessary or desirable.

(3) The Minister may require any financial or other statement or information required to be furnished to him to be accompanied by an affidavit of all or any of the officers of the society deposing to its accuracy. 1938, c. 16, s. 14. Minister may require affidavit certifying.

14. A meeting of the board shall be called by the secretary Meetings of board. upon the direction of the president or of any three members of the board by sending notice thereof to all the members of the board at least three days before the time fixed for the meeting; provided that a meeting of the board may be held immediately following any annual, regular or special meeting of the society, without notice. 1938, c. 16, s. 15.

Powers
of board;

15.—(1) Subject to the by-laws and regulations of the society, the board shall have power to act for and on behalf of the society in all matters.

quorum;

(2) Five of the members of the board shall constitute a quorum.

vacancies.

(3) When a vacancy occurs on the board by reason of the death or resignation of any officer or director or otherwise, the remaining members of the board may appoint any member of the society to fill the vacancy. 1938, c. 16, s. 16.

Meetings.

16. The board may determine what regular and special meetings of the society shall be held during each year. 1938, c. 16, s. 17.

By-laws and
regulations.

17. By-laws and regulations of a society may be made, adopted, amended or repealed at any annual or regular meeting of the society or at a special meeting of which at least one week's notice has been given in the manner provided for by subsection 2 of section 10. 1938, c. 16, s. 18.

Provincial
grants.

18. Every society that has complied with this Act and has furnished the statements and other information required by the Minister shall be entitled to receive a grant out of the moneys appropriated by the Legislature for such purpose, providing the membership of the society is not less than that required for organization purposes. 1938, c. 16, s. 19.

Idem.

19. Such amount as may be appropriated by the Legislature for the purposes of this Act shall be subject to division among the societies according to the following plan:

- (a) Every society shall, during the first year of its existence, receive a grant at the rate of 50 cents for every paid-up member as of the 1st day of July, provided that no such grant shall exceed \$75;
- (b) The balance of such amount shall be subject to division among the remaining societies as follows:
 - (i) one-third among the societies in proportion to the total number of members of each society in the preceding year,
 - (ii) two-thirds among the societies in proportion to the total amount expended by each society during the preceding year for horticultural purposes, in accordance with section 9;

provided that no society shall in any year be entitled to a grant in excess of three and one-half per cent of the amount appropriated for the purposes of this Act for such year nor shall any society be entitled to a grant in excess of \$500 in any year. 1938, c. 16, s. 20.

20. The council of any city, town, village, county or township may grant money to any society organized wholly or partly within its limits. 1938, c. 16, s. 21.

21. The Minister may appoint a person to inspect the books and accounts of any society and may empower the person to summon witnesses and enforce the production of documents before him and to take evidence upon oath in regard to such inspection, and every officer of a society shall, when requested, submit the books and accounts thereof to such inspection. 1938, c. 16, s. 22.

22. Where the board has reason to believe that any member or other person exhibiting any product at any exhibition at which prizes are offered by the society has committed a fraud in respect of the product, the board may withhold payment or delivery of any prize money or other prize award to the person until the person proves to the satisfaction of the board that no fraud has in fact been committed. 1938, c. 16, s. 23.

CHAPTER 170

The Hospitals Tax Act**1. In this Act,**Interpre-
tation.

- (a) "admission" includes entry to any place of amusement or place of entertainment where any charge is made or fee is collected before or after entry;
- (b) "Controller" means Controller of Revenue;
- (c) "entertainment by one or more paid performers" where the entertainment is incidental to the service of food or the service of liquor, beer or wine, includes,
 - (i) whether or not facilities for dancing are provided, any performance that is not a musical performance or is not wholly a musical performance, and includes,
 - (ii) where facilities for dancing are not provided, a musical performance by three or more vocalists, or by one instrumentalist and two or more vocalists, or by a band, orchestra or group of instrumentalists if more than one musical performer who is not a regular member of such band, orchestra or group performs therewith, and in this subclause "regular member" means a performer who has a contract to perform regularly with such group of performers and, pursuant to such contract, is paid for his services by the leader of the group or by the employer of such group on not less than a weekly basis whether or not such group performs during each week for which such performer is paid;
- (d) "facilities for dancing" means a cleared dance floor when music for dancing is provided by any means;
- (e) "owner" means a person who operates a place of amusement or a place of entertainment, or both;
- (f) "place of amusement" means any premises or place, whether enclosed or not, where any cinematograph or moving picture machine or similar apparatus is operated, or where any theatrical performance, carnival, circus, side-show, menagerie, concert, rodeo, exhibition, horse race, athletic contest or other performance is staged or held, and to which admission is

granted upon payment of a price of admission through the sale of tickets or otherwise;

- (g) "place of entertainment" means any premises or place, whether enclosed or not,
- (i) where facilities for dancing are provided with the service of food or the service of liquor, beer or wine, or
 - (ii) where entertainment by one or more paid performers is provided with the service of food or the service of liquor, beer or wine,

but no premises or place shall be deemed to be a place of entertainment on any day until facilities for dancing are provided or entertainment by one or more paid performers is provided and, thereafter, such premises or place shall be a place of entertainment until every condition that made the premises or place a place of entertainment has ceased;

- (h) "price of admission" includes every charge made to or fee collected from a purchaser by an owner before or after admission to a place of amusement or place of entertainment and includes, when it is for admission to a place of entertainment, every cover charge and every charge for the service of food or the service of liquor, beer or wine;
- (i) "purchaser" means any person who purchases admission for himself to any place of amusement or place of entertainment and includes any person for whom admission to any place of amusement or place of entertainment is purchased by any other person;
- (j) "regulations" means regulations made under this Act;
- (k) "service of liquor, beer or wine" means the service of liquor, beer or wine to a purchaser in a place from which, in order to use facilities for dancing or to view entertainment by one or more paid performers, he is not required to pass through a doorway or through more than one doorway;
- (l) "service of food" means the service of food or beverages, other than liquor, beer or wine, to the purchaser at a table in a place from which, in order to view entertainment by one or more paid performers, he is not required to pass through a doorway or through more than one doorway;
- (m) "Treasurer" means Treasurer of Ontario. 1950, c. 27, s. 1.

2.—(1) No owner shall sell admission to a place of amuse- ^{Licences.}
ment or place of entertainment unless a licence therefor has
been, upon his application, issued to him under this Act, and
unless the licence is in force at the time of sale. 1948, c. 41,
s. 2 (1); 1950, c. 27, s. 2.

(2) The licence shall remain in force until the 31st day of ^{Expiry.}
March next following the date of issue.

(3) The application for the licence shall be filed with the ^{Application.}
Controller.

(4) The licence shall be granted by the Treasurer, or by ^{Granting of}
such officer as he may appoint, upon payment of \$1 by the ^{licences.}
owner to the Treasurer for the use of His Majesty in
right of Ontario.

(5) The licence shall be placed in public view in the office of ^{Posting up}
the owner at which admission is sold to the purchaser. ^{of licences.}

(6) The Treasurer may cancel or suspend the licence of, ^{Cancellation}
or may refuse to issue a licence to, any owner who has been ^{of licences.}
convicted of an offence under this Act.

(7) The application for a licence shall contain the name and ^{Information.}
address of the owner, and where the owner is a partnership, the
names and addresses of each partner, and where the owner is a
corporation, club, association or syndicate, the name and
address of the president, if he resides in Ontario, and if not,
the name and address of its resident manager or representative,
and the address of its chief place of business in Ontario. 1948,
c. 41, s. 2 (2-7).

3.—(1) Every purchaser of admission to a place of amuse- ^{Tax on}
ment shall pay to the Treasurer for the use of His Majesty ^{admission}
in right of Ontario a tax on the price of admission as follows: ^{to places of}
^{amusement.}

Price of Admission						Tax	
More than 15 cents and not more than 18 cents —						2 cents	
"	"	18	"	"	"	23	" — 3 "
"	"	23	"	"	"	31	" — 4 "
"	"	31	"	"	"	36	" — 5 "
"	"	36	"	"	"	44	" — 6 "
"	"	44	"	"	"	50	" — 7 "
"	"	50	"	"	"	57	" — 8 "
"	"	57	"	"	"	64	" — 9 "
"	"	64	"	"	"	70	" —10 "
"	"	70	"	"	"	77	" —11 "
"	"	77	"	"	"	83	" —12 "
"	"	83	"	"	"	90	" —13 "
"	"	90	"	"	"	96	" —14 "
"	"	96	"	"	"	99	" —15 "

and where the price of admission is more than 99 cents, a tax at the rate of 15 per cent calculated upon the price of admission, and in the calculation every fraction of less than one-half cent shall not be counted and every fraction of one-half cent or more shall be counted as one cent.

Tax on
admission
to places of
entertain-
ment.

(2) Every purchaser of admission to a place of entertainment shall pay to the Treasurer for the use of His Majesty in right of Ontario,

(a) a tax at the rate of 15 per cent calculated upon the price of admission where such price is less than \$6.66; and

(b) a tax of \$1 where such price is \$6.66 or more,

and in the calculation under clause *a*, every fraction of less than one-half cent shall not be counted and every fraction of one-half cent or more shall be counted as one cent. 1950, c. 27, s. 3.

Collection.

4.—(1) Every owner shall, as the agent of the Treasurer, collect the tax imposed by this Act.

Arrange-
ments for
collection.

(2) For the purpose of collecting the tax, the Treasurer may enter into such arrangement with each owner as he may deem expedient and may provide for the payment of such remuneration to each owner as he may deem proper. 1948, c. 41, s. 5.

Price of
admission
and tax.

5.—(1) Every owner shall inform every purchaser of admission of the price or prices of admission to his place of amusement or place of entertainment and of the amount of the tax to be paid by the purchaser by placing in public view at the office of the owner where admission may be purchased a schedule showing such price or prices and the amount of such tax.

Receipt
for tax.

(2) For the purposes of subsection 2 of section 3, every owner shall collect the tax on each part of the price of admission and shall give each purchaser a receipt for each such part so that each purchaser may know when he has paid the maximum tax. 1950, c. 27, s. 5.

Sale
invoices.

6. Every owner shall, upon the request of the purchaser, deliver to him a writing showing his name, his address, the number of his licence issued under this Act, the price of admission charged to the purchaser, and separately stated, the amount of the tax payable or paid by the purchaser. 1948, c. 41, s. 7.

7. No owner shall advertise or hold out or state to the public or to any purchaser, directly or indirectly, that the tax or any part thereof imposed under this Act will be assumed or absorbed by the owner or that it will not be considered as an element in the price to the purchaser or, if added, that it or any part thereof will be refunded. 1948, c. 41, s. 8.

8.—(1) Where special circumstances exist, whether of a religious, charitable or educational nature or otherwise, the Lieutenant-Governor in Council may, upon application of the owner made to the Treasurer at least 10 days before the tax would otherwise be payable, exempt the purchaser from payment and the owner from collection of the tax imposed under this Act. 1948, c. 41, s. 9 (1).

(2) Where it is shown to the satisfaction of the Treasurer that the tax calculated on the price of admission to a place of amusement or place of entertainment at or in which an entertainment has been held for the purpose of raising funds for religious, charitable or educational purposes, was collected and paid to the Treasurer in accordance with this Act, and where the owner files with the Controller a statement, verified by his affidavit, giving in detail all receipts and expenses in connection with the entertainment and the receipt of the organization to which the proceeds were donated acknowledging receipt of the proceeds is attached thereto, and where the Treasurer is satisfied that the organization is one the operations of which are carried on exclusively for religious, charitable or educational purposes or for any combination of such purposes, the Treasurer may pay to the organization an amount equal to that proportion of the tax so collected and paid which the proceeds acknowledged as received by the organization bear to the gross amount received by the owner as the price of admission to such place of amusement or place of entertainment. 1948, c. 41, s. 9 (2); 1950, c. 27, s. 6.

9.—(1) Every owner shall, as the agent of the Treasurer, on or before the tenth day of each month, without notice or demand, deliver to the Controller such return as is required for the purpose of carrying out this Act. 1948, c. 41, s. 10 (1).

(2) The return shall be verified by the certificate of the owner, and, if the owner is not an individual, of his president or his resident manager or representative in Ontario, certifying that the financial statements for the preceding month, attached to the return, showing the receipts of the place of amusement or place of entertainment, the amount of the tax collectable under this Act and such other information as is required, are in agreement with the books of the owner and exhibit truly and correctly all the business of the owner at his place of

amusement or place of entertainment during the preceding month. 1948, c. 41, s. 10 (2); 1950, c. 27, s. 7.

Penalty for
sale of
admission
unless
licensed.

10.—(1) Every owner who fails to comply with subsection 1 of section 2 shall be guilty of an offence and liable to a penalty for each sale, in addition to the costs, of not less than \$10 and not more than \$1,000 and, in default of payment of the costs and penalty, to imprisonment for a term of three months.

Penalty for
failure to
pay tax.

(2) Every purchaser who fails to pay the tax imposed under this Act shall be guilty of an offence and shall be liable to a penalty of not less than \$10 and not more than \$200.

Penalty for
failure to
collect tax.

(3) Every owner who refuses or neglects to collect, account for or remit the amount of the tax in accordance with this Act or the regulations, shall be guilty of an offence and shall be liable, in addition to the remittance of the tax, to a penalty for each day during which such offence continues, of not less than \$10 and not more than \$1,000 and in default of payment, to imprisonment for a term of three months.

Penalty for
default in
filing return.

(4) Every owner who fails to comply with subsection 1 of section 9 shall pay a penalty of five per cent of the tax collectable by him; provided that in no case shall such penalty be more than \$500.

Penalty for
failure to
complete
return.

(5) When any owner fails to complete the information required in the monthly return to be delivered to the Controller under subsection 1 of section 9, such owner shall be liable to a penalty of one per cent of the tax collectable by him; provided that in no case shall such penalty be less than \$1 or more than \$20. 1948, c. 41, s. 11 (1-5).

Penalty for
failure of
employee to
collect tax.

(6) Every employee of an owner who permits or authorizes or is a party or privy to the admission of any purchaser to a place of amusement or place of entertainment without collecting from the purchaser the tax imposed under this Act, shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$500. 1948, c. 41, s. 11 (6); 1950, c. 27, s. 8 (1).

Injunction.

(7) In addition to the penalties provided by this Act, the Treasurer may apply to a judge of the Supreme Court for an injunction against any owner who sells admission to his place of amusement or place of entertainment without having a subsisting licence under this Act ordering him to cease selling such admission and to close his place of amusement or place of entertainment until a licence is granted and all costs are paid. 1948, c. 41, s. 11 (7); 1950, c. 27, s. 8 (2).

11. The Treasurer may enlarge the time for making any return before or after the time for making it. 1948, c. 41, s. 12. Time for making return.

12.—(1) Every owner shall remit with the monthly return required by subsection 1 of section 9, the amount of the tax collectable by him as shown therein. Remittance of tax.

(2) When an owner remits less than the amount of the tax collectable as shown by the return, he shall pay interest at the rate of seven per cent per annum upon the deficiency calculated from the date of default until the date of remission to the Treasurer. 1948, c. 41, s. 13. Deficiency in amount remitted.

13.—(1) If the Controller, in order to enable him to make an accounting of the tax collectable by the owner under this Act or for any other purpose, desires any information or additional information, or a return from any owner who has not made a return or a complete or sufficient return, he may, by registered letter, demand from the owner or from the president, manager, secretary, or any director, agent or representative thereof, such information, additional information or return, and the owner, president, manager, secretary, or any director, agent or representative upon whom the demand is made shall deliver to the Controller the information, additional information or return within 30 days of the mailing of the registered letter. Demand for additional information.

(2) The Controller may, by registered letter, require the production under oath or otherwise, by any owner or the president, manager, secretary, or any director, agent or representative of such owner, or by any person, partnership, syndicate, trust or company holding or paying or liable to pay any portion of the income of such owner, or by any partner, agent or official of any such person, partnership, syndicate, trust or company, of any letters, accounts, invoices, statements or other documents. Production of letters, accounts, etc.

(3) If any owner fails or refuses to keep adequate books or accounts for the purpose of ascertaining the amount of the tax collectable by him under this Act, the Controller may require the owner to keep such records and accounts as he may prescribe. Books of account to be kept.

(4) For every default in complying with subsections 1 to 3 the owner or the persons, or both, in default shall jointly and severally be liable to a penalty of \$25 for each day during which the default continues. Penalty.

Compliance of Treasurer or Controller etc., to be proved by affidavit.

(5) For the purpose of any proceedings taken under this Act, the facts necessary to establish compliance on the part of the Treasurer or of the Controller with this section, as well as the failure of any owner or person to comply with the requirements of this section, shall be sufficiently proven in any court by affidavit of the Treasurer or of any officer of the Treasury Department.

Inquiry as to amount of tax collectable.

(6) Any officer authorized by the Treasurer may make such inquiry as he may deem necessary to ascertain the amount of any tax collectable by any owner under this Act, and for the purposes of such inquiry, such officer shall have all the powers and authority that may be conferred upon a commissioner under *The Public Inquiries Act*.

Rev. Stat., c. 308.

Treasurer or Controller not bound by return.

(7) No return or information supplied by or on behalf of any owner shall be binding upon the Treasurer or the Controller, and notwithstanding any such return or information, or in the absence of any return or information, the Controller may determine the amount of the tax collectable by any owner.

Notice of accounting.

(8) After examination of the return of the owner the Controller shall send a notice of accounting to the owner verifying or altering the amount of tax shown to be collectable by the owner in his return, and any additional tax found to be collectable over the amount shown in the return shall be remitted within one month from the date of mailing of the notice of accounting, and subject to section 12, such additional tax shall bear interest at the rate of four per cent per annum calculated from the last date prescribed for making the return to the date of remission to the Treasurer.

Penalty for non-remittance of additional taxes.

(9) If any owner fails to remit the additional tax and interest within one month after the date of the mailing of the notice of accounting, the owner shall pay, in addition to the interest provided by subsection 8, interest at the rate of three per cent per annum upon the additional tax from the expiry of the period of one month after the date of the mailing of the notice of accounting to the date of remission to the Treasurer. 1948, c. 41, s. 14.

Refunds of over-payments.

14.—(1) The Treasurer may refund before or after the issue of the notice of accounting any amount which the owner has remitted in excess of the taxes collectable or of the interest or penalties payable by him, if application in writing is made therefor by the owner within six months of the date of remission of the tax or the date on which the notice of accounting was issued.

Idem.

(2) Any refund under this section may be paid with interest at the rate of three per cent per annum calculated upon the

amount by which the tax remitted exceeds the amount of tax collectable as determined in the notice of accounting, provided that in no case shall interest be paid where the refund of tax is less than \$50. 1948, c. 41, s. 15.

15. Notwithstanding any prior accounting or where no accounting has been made, the owner shall continue to be ^{Continuance of liability.} liable for any tax which is collectable and which has not been remitted by him under this Act. 1948, c. 41, s. 16.

16. Upon default of remission by any owner of any tax ^{Recovery of tax or penalty.} collectable by him or any penalty payable by him under this Act,

- (a) the Treasurer may bring an action for recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Treasurer or his name of office and may be continued by his successor in office as if no change had occurred, and shall be tried without a jury; or
- (b) the Treasurer may issue a warrant and direct it to the sheriff of any county or district in which any property of the owner is located or situate, for the amount of the tax, interest and penalty, or any of them owing by the owner, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant shall have the same force and effect as a writ of execution issued out of the Supreme Court; or
- (c) the Treasurer or any officer authorized by him may enter upon the premises of the owner or any other place in Ontario where the books or records of the owner or any part of them are kept and make such investigation and examination as he may deem necessary, and may seize any of the books and records and may, by notice in writing, require that any person who may be indebted to the owner shall pay the debt to the Treasurer. 1948, c. 41, s. 17.

17.—(1) A notice under clause *c* of section 16 may be served personally or by registered post addressed to such person at the address indicated in the books or records of the owner, and the receipt of payment of the amount of the indebtedness by the Treasurer shall constitute a good and sufficient discharge of the liability of such person to the owner to the extent of the amount indicated in the receipt. ^{Manner of serving notice.}

Liability
of debtor.

(2) Any person discharging any liability to an owner owing taxes collectable by him or penalties payable by him, or both, under this Act after the service of the notice referred to in subsection 1 shall be personally liable to the Treasurer to the extent of the amount of the liability discharged between the person and the owner or to the extent of the amount of taxes collectable by the owner, or interest and penalties payable by him, or both, owing under this Act, whichever is the lesser amount, and the Treasurer shall have the same remedies for the recovery of such amount from such person as he has for the recovery from the owner of a tax collectable or penalty payable by him under this Act. 1948, c. 41, s. 21.

Priority
of tax.

18. Every tax collectable and every penalty payable by any owner under this Act shall be a first lien and charge upon his property in Ontario. 1948, c. 41, s. 22.

Declarations
or
affidavits.

19. Declarations or affidavits in connection with returns under this Act may be taken before any person having authority to administer an oath, or before any person specially authorized for that purpose by the Lieutenant-Governor in Council, but any person so specially authorized shall not charge any fee therefor. 1948, c. 41, s. 25.

Secrecy.

20.—(1) No person employed in the service of His Majesty shall communicate or allow to be communicated to any person not legally entitled thereto, any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act.

Penalty.

(2) Every person who violates any provision of this section shall be guilty of an offence and liable to a penalty of not more than \$200. 1948, c. 41, s. 26.

Remedies
for recovery
of tax and
penalties.

21. The use of any remedy shall not bar or affect any other remedy, and the remedies provided by this Act for the recovery and enforcement of payment or collection, or both, of any tax or penalty, or both, imposed by this Act shall be in addition to any other remedies existing by law, and no action or other proceeding shall in any way prejudice, limit or affect any lien, charge or priority existing under this Act or otherwise. 1948, c. 41, s. 20.

Information
or complaint
within three
years.

22. Any information or complaint with respect to any violation of this Act or the regulations may be laid or made within three years from the time when the matter of the information or complaint arose. 1948, c. 41, s. 18.

23. Except where otherwise specifically provided, the penalties imposed by this Act shall be recoverable under *The Summary Convictions Act* and shall be payable to the Treasurer. 1948, c. 41, s. 19. Penalties payable to Treasurer. Rev. Stat., c. 379.

24. Every person who violates any of the provisions of this Act or the regulations for which no other penalty is provided, shall be guilty of an offence and liable to a penalty of not less than \$50 and not more than \$500. 1948, c. 41, s. 23. General penalty.

25. The Lieutenant-Governor in Council may make regulations,

- (a) authorizing or requiring the Deputy Treasurer or any other officer of the Treasury Department to exercise any power or perform any duty conferred or imposed upon the Treasurer by this Act;
 - (b) providing for the collection of the tax imposed under this Act by the issuance of tickets wherever it is deemed advisable;
 - (c) providing for the exemption of the purchaser from the payment and the owner from the collection of the tax that would otherwise be payable and collectable under this Act where the Treasurer, in his absolute discretion, determines that the entertainment given, amusement provided or game played is for religious, charitable or educational purposes;
 - (d) respecting any other matter necessary or advisable to carry out effectively the purpose of this Act. 1948, c. 41, s. 24.
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CHAPTER 171

The Hotel Fire Safety Act

1. In this Act,

Interpre-
tation.

- (a) "fire door" means a hollow-metal, metal-clad, sheet-metal, steel or two-ply tin-clad door that is automatic or self-closing;
- (b) "Fire Marshal" means the Fire Marshal of Ontario;
- (c) "fire-resistive construction" means construction in which,
 - (i) the exterior walls are wholly of brick, stone, concrete, hollow block, solid block or the equivalent,
 - (ii) the interior walls and partitions are made of incombustible materials,
 - (iii) the floors and their supports are made of incombustible materials other than the floor covering, which may be wood, and
 - (iv) the roofs are made of incombustible materials;
- (d) "fire wall" means a partition wall of fire-resistive construction extending from the ground to a point three feet above the roof and in which all openings are protected by fire doors;
- (e) "grade" means the average level of the ground next to the building;
- (f) "hotel" means any hotel, tavern, inn or public house in one building or in two or more connected or adjacent buildings used mainly for the purpose of catering to the needs of the travelling public by supplying food and furnishing sleeping accommodation of not less than 10 bedrooms and includes all premises licensed under *The Liquor Licence Act* but does not include premises commonly known as boarding houses and apartment houses; Rev. Stat.,
c. 211.
- (g) "incombustible" as applied to a material or combination of materials means steel, iron, brick, tile, concrete, slate, asbestos, wired glass, cement or gypsum plaster or other material that will not fuse, burn or dis-

integrate when exposed to a temperature of 1,000 degrees Fahrenheit for a period of one hour;

- (h) "inspector" means an inspector appointed under this Act;
- (i) "panic bolt" means a bolt or lock that can be opened at all times from the inside by downward pressure on a bar or lever;
- (j) "regulations" means regulations made under this Act;
- (k) "self-closing" as applied to a door, window or other protection for an opening, means that such door, window or other protection is normally closed and will immediately return to the closed position when it is opened and released;
- (l) "smoke-proof" means constructed so as to prevent the rapid passage of smoke and flames;
- (m) "storey" means that portion of a building between the top of any floor and the top of the next floor above it, or if there is no floor above it, that portion between the top of any floor and the ceiling above it, and the storey closest to grade having its ceiling more than six feet above grade shall be deemed to be the first storey. 1948, c. 42, s. 1.

What hotels
to be fire-
resistive.

2.—(1) Every hotel more than two storeys in height that is constructed or remodelled after the 15th day of June, 1948, every addition more than two storeys in height thereafter made to any hotel, and every building more than two storeys in height thereafter converted for use as an hotel, shall be of fire-resistive construction.

Require-
ment for
a fire wall.

(2) Where an addition is made after the 15th day of June, 1948, to any hotel and either the addition or the hotel is not of fire-resistive construction, there shall be a fire wall between the addition and the hotel. 1948, c. 42, s. 2.

Minimum
number and
location of
stairways.

3.—(1) There shall be not less than two stairway systems in or in connection with every hotel, located as far apart as possible and so as to provide not less than two independent means of egress for the occupants on each floor.

Stairways in
certain
hotels.

(2) Every stairway in or in connection with an hotel that existed on the 15th day of June, 1948, and that is more than two storeys in height shall be fully enclosed and smoke-proof, provided that an exterior iron stairway with balconies at each floor or a metal tubular or spiral fire-escape may, with the

written permission of the inspector, be used in lieu of a fully enclosed and smoke-proof stairway.

(3) Every stairway in or in connection with,

Stairways
in certain
hotels.

(a) an hotel more than two storeys in height constructed or remodelled after the 15th day of June, 1948; or

(b) an addition more than two storeys in height made to an hotel after the 15th day of June, 1948; or

(c) a building more than two storeys in height converted for use as an hotel after the 15th day of June, 1948,

shall be fully enclosed, smoke-proof and of fire-resistive construction.

(4) Notwithstanding subsections 2 and 3, any stairway Exception. extending only to the second or mezzanine storey in an hotel of fire-resistive construction may be an open stairway.

(5) Every stairway from any portion of an hotel, other than from a place of public assembly, shall have a clear width of not less than 22 inches, and each step shall have not less than a ten-inch tread and not more than an eight-inch rise except that, where structural difficulties exist, the inspector may give written permission for steps having not less than an eight-inch tread. Minimum width of stairways.

(6) Every stairway from any portion of an hotel used as a place of public assembly shall have a clear width of not less than 44 inches, and each step shall have at least a ten-inch tread and not more than an eight-inch rise. Minimum width of stairways from place of assembly.

(7) Where in any hotel more than two storeys in height any stairway is located so as to require the users thereof to pass through a lobby or other place of public assembly in order to reach the outside of the building, the inspector may make an order requiring the lobby or other place of public assembly to be equipped with an automatic sprinkler system. 1948, c. 42, s. 3. Where stairway does not give direct egress.

4.—(1) No exterior stairway of,

Exterior
stairways
in certain
hotels;

(a) an hotel more than two storeys in height constructed or remodelled after the 15th day of June, 1948; or

(b) an addition more than two storeys in height made to an hotel after the 15th day of June, 1948; or

- (c) a building more than two storeys in height constructed for use as an hotel after the 15th day of June, 1948,

shall extend more than five storeys above grade.

to extend
to ground.

(2) Every exterior stairway of an hotel shall extend to the ground, provided that the inspector may give written permission for the bottom flight of such stairway to be counter-balanced. 1948, c. 42, s. 4.

Windows
and doors
beneath
exterior
stairways.

5.—(1) Every window, except a first-storey display window, in an hotel beneath any portion of an exterior stairway or opening onto or within 10 feet of an exterior stairway, shall be provided with wired glass and every door similarly located shall be metal-clad.

No other
wall
openings.

(2) There shall be no wall opening, other than a door or window, beneath or within 10 feet of an exterior stairway of an hotel.

Doors and
windows
opening to
stairways.

(3) Every door and window opening to a stairway in or in connection with an hotel shall be not less than 30 inches in width and shall be hinged to open outwards with the line of exit travel and equipped with panic bolts only. 1948, c. 42, s. 5.

Balconies
and landings.

6. The width of every balcony and landing in connection with a stairway in or in connection with an hotel shall be not less than the width of the door leading to it and shall have an area of not less than 12 square feet. 1948, c. 42, s. 6.

Railings.

7. Every exterior stairway shall have an iron railing not less than 32 inches in height, measured perpendicularly from the nosing of the step, and every balcony and landing in connection with an exterior stairway of an hotel shall have an iron railing not less than three feet in height on all sides. 1948, c. 42, s. 7.

Passage-
ways.

8. Every passageway in an hotel leading to an exit door or stairway shall be not less than three feet in width and the walls and ceiling thereof shall be surfaced with plaster, plaster board or other incombustible material unless it is protected with an automatic sprinkler system. 1948, c. 42, s. 8.

Approaches
to stair-
ways.

9. The approaches to every stairway in an hotel shall be unobstructed and shall not be through a room used as a bedroom or bathroom or for any purpose that may obstruct free passage, and no such approach shall be veiled from open view by any ornamentation, curtain or other thing. 1948, c. 42, s. 9.

10. Rotating doors may be installed in hotels at exterior entranceways only and shall be collapsible and flanked within 15 feet by one or more doors that open outwards and that have a total width of not less than 44 inches. 1948, c. 42, s. 10. Rotating doors.

11.—(1) Every exit sign in an hotel shall have the word "EXIT" displayed in block letters not less than six inches in height and coloured white on a red background or coloured red on a contrasting background, provided that luminous signs of equivalent visibility may be used in lieu thereof. Exit signs.

(2) Where electricity is available, every exit sign in an hotel shall be illuminated during the night by an electric lamp supplied from a circuit separate from the domestic electric system. Electric exit signs.

(3) Every hotel shall have an exit sign placed above or beside every exit door and every exit window so as to be clearly visible. 1948, c. 42, s. 11. Location of exit signs.

12. Every hotel shall display signs in such manner and in such locations as the inspector may order indicating the directions of travel to reach the exits. 1948, c. 42, s. 12. Directional signs.

13. Every hotel shall display in each bedroom a floor plan showing the location of the exits and indicating the directions of travel to reach them and also a notice giving the fire safety rules of the hotel. 1948, c. 42, s. 13. Notices to be displayed in each bedroom.

14. Every exterior stairway, balcony, landing, exit door and exit window shall be kept free at all times from obstructions including ice and snow. 1948, c. 42, s. 14. Exits to be kept clear.

15. Every elevator shaft in an hotel shall be fully enclosed with incombustible materials and the top thereof shall be equipped with heat-actuated vents, and every elevator door shall be of metal and wired glass without openings. 1948, c. 42, s. 15. Elevator shafts and doors.

16. Every boiler or furnace room in an hotel shall be of fire-resistive construction and shall be equipped with fire doors. 1948, c. 42, s. 16. Boiler and furnace rooms.

17. Every hotel not completely equipped with an automatic sprinkler system or a heat-actuated fire detection system and containing 20 or more bedrooms above the first storey shall have a watchman on duty from ten o'clock each night until six o'clock the following morning, and the watchman Where watchman to be employed.

shall be equipped with a watchman's clock and he shall make a round of the hotel at least once every hour during his duty period. 1948, c. 42, s. 17.

Where fire
fighters to
be on duty.

18. Every hotel containing 50 or more bedrooms above the first storey shall have at least one adult male employee trained in fire fighting to the standard prescribed by the regulations on duty at all times within the hotel, provided that this section shall not apply where the hotel is in a municipality that has a fire department and where the hotel is completely equipped with an automatic sprinkler system or a heat-actuated fire detection system connected electrically with an alarm in the fire department or with a central signal supervisory service. 1948, c. 42, s. 18.

Fire alarms.

19. Every hotel shall have a fire-alarm system capable of being heard throughout the hotel and of being operated from each floor and from the hotel office. 1948, c. 42, s. 19.

Smoke-proof
barriers.

20.—(1) Every hotel not of fire-resistive construction shall have smoke-proof barriers in such locations as the inspector may order.

Power to
require
sprinkler
systems.

(2) The inspector may make an order requiring any hotel not of fire-resistive construction that is four or more storeys in height and is in a city or that is three or more storeys in height and is not in a city to have an automatic sprinkler system or a heat-actuated fire detection system. 1948, c. 42, s. 20.

Duty to
call fire
department.

21. When a fire is discovered in an hotel in a municipality having a fire department, the manager or other person in charge shall immediately call the fire department. 1948, c. 42, s. 21.

Special
powers of
inspectors.

22. Where an inspector finds that any condition exists in an hotel that makes the hotel specially liable to fire, he may make an order directing the hotelkeeper to remedy the condition. 1948, c. 42, s. 22.

Orders of
inspector.

23.—(1) Where an inspector makes an order under this Act he shall cause a copy of the order to be delivered to the hotelkeeper by personal service or by registered mail.

Right of
appeal.

(2) If the hotelkeeper feels aggrieved by the order he may appeal within 10 days from the service of the order to the Fire Marshal who shall examine the order and affirm, modify or revoke the same and cause a copy of his decision to be delivered to the hotelkeeper by personal service or by registered mail.

(3) If the hotelkeeper is dissatisfied with the decision of the Fire Marshal, he may, within 10 days from the service of the decision, apply by way of originating notice according to the practice of the court, to the judge of the county or district court of the county or district in which the hotel is situate, for an order modifying or revoking the order, and the judge, upon such application, may affirm, modify or revoke the order and his decision shall be final. Right of application to court.

(4) If an application to the county or district judge is not prosecuted by the hotelkeeper within 30 days from the filing of the originating notice, the judge may dismiss the application at the request of the Fire Marshal. 1948, c. 42, s. 23. Failure to prosecute application.

24.—(1) Every hotelkeeper who operates an hotel that does not conform with this Act and the regulations or who fails to comply with any order made by an inspector shall be guilty of an offence and upon summary conviction shall be liable to a penalty of not less than \$25 and not more than \$500, and, in addition, the magistrate may order the hotel to be closed until it is made to conform with this Act and the regulations or with the order of the inspector. Penalties.

(2) The conviction under this Act of any hotelkeeper shall not operate as a bar to further prosecution under this Act for the continued failure on the part of the hotelkeeper to comply with this Act and the regulations or the order of an inspector but such continuance shall constitute a new and separate offence. 1948, c. 42, s. 24. Conviction not bar to further charge.

25. The Lieutenant-Governor in Council may appoint one or more inspectors to enforce this Act and the regulations. 1948, c. 42, s. 25. Inspectors, appointment of.

26. The Lieutenant-Governor in Council may make regulations, Regulations.

- (a) requiring the submission of drawings and specifications to the Fire Marshal for review and approval prior to the construction, alteration or remodelling of and additions to hotels;
- (b) prescribing the mode of, and the materials to be used in, the construction, alteration or remodelling of and additions to hotels or any designated class thereof;
- (c) prescribing the mode of erection or installation of stairways, balconies, fire walls, doors, windows, exits and fire-prevention, fire-protection and fire-alarm

equipment in or outside of any hotel or any designated class thereof, and the materials to be used therein;

- (d) prescribing the mode of the construction of heating, ventilating and air-conditioning systems in hotels or any designated class thereof;
- (e) regulating the location, arrangement and maintenance of places of public assembly in hotels or any designated class thereof, and prescribing the mode of construction of such places;
- (f) controlling or prohibiting exhibits and displays in hotels or any designated class thereof;
- (g) controlling or prohibiting the use of flammable decorations, curtains and drapes in hotels or any designated class thereof;
- (h) prescribing standards of housekeeping for hotels;
- (i) prescribing a standard of training in fire-fighting for employees of hotels;
- (j) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1948, c. 42, s. 26.

Municipal
by-laws not
affected.

27. Nothing in this Act or the regulations shall affect any by-law relating to the matters mentioned in this Act or the regulations and lawfully passed by a municipal council, or the authority of a municipal council to pass any such by-law, in so far as such by-law imposes additional or more stringent requirements than those contained in this Act or the regulations. 1948, c. 42, s. 27.

CHAPTER 172

The Hotel Registration of Guests Act

1. In this Act, "hotel" means a separate building or two or more connected buildings used mainly for the purpose of catering to the needs of the travelling public by the supply of food and also by the furnishing of sleeping accommodation of not less than six bedrooms as distinguished from any other building or connected buildings used mainly for the purpose of supplying food and lodging by the week or otherwise commonly known as "boarding houses" or of furnishing living quarters for families and having a dining-room or restaurant commonly known as "apartment houses" or "private hotels". 1944, c. 25, s. 1.

Interpretation.

2. A register shall be kept in every hotel in which shall be entered the name and usual place of residence of every person admitted as a guest in the hotel and occupying a room therein alone or with another person. 1944, c. 25, s. 2.

Register to be kept.

3. Every owner and every manager of an hotel who fails to keep the register required by section 2 or to see that the particulars required by section 2 are entered therein, or who knowingly and wilfully permits any untrue statement as to the name or place of residence of a guest to be entered in the register shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$10 and not more than \$50, and in default of payment may be imprisoned for a term of not more than three months. 1944, c. 25, ss. 3, 5.

Penalty for not keeping register properly.

4. Every person who applies for admission as a guest in an hotel and who registers under or represents himself as bearing some other name than his own, or who in registering or procuring admission to an hotel, makes any false statement as to his ordinary place of residence, shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$20 and not more than \$200, and in default of payment may be imprisoned for a term of not more than three months. 1944, c. 25, ss. 4, 5.

Penalty for guest registering falsely.

Notice of
rates to
be posted.

5.—(1) In every room used for sleeping accommodation in an hotel there shall be kept posted in a conspicuous place a notice specifying the rates charged for the room.

Penalty for
failure to
post notice.

(2) Every owner and every manager of an hotel who fails to keep posted the notice required by subsection 1 shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$100. 1948, c. 43, s. 1, *amended*.

CHAPTER 173

**The Hours of Work and Vacations
with Pay Act****1. In this Act,**Interpre-
tation.

- (a) "Board" means the Industry and Labour Board;
- (b) "employee" means any person who is in receipt of or entitled to any compensation for labour or services performed for another;
- (c) "employer" includes every person, firm, corporation, agent, manager, representative, contractor or sub-contractor having control, direction of, or responsible, directly or indirectly, for the employment of any employee;
- (d) "industrial undertaking" means,
 - (i) every establishment and undertaking and all work in or about any industry, and
 - (ii) any establishment, undertaking or work in or about any business, trade or occupation which may be prescribed by the regulations;
- (e) "regulations" means regulations made under this Act. 1944, c. 26, s. 1.

2.—(1) Subject to this Act, the working hours of an employee in any industrial undertaking shall not exceed eight in the day and forty-eight in the week.

(2) Subject to this Act, every employee in an industrial undertaking shall be given a vacation of at least one week with pay for every working year of his employment. 1944, c. 26, s. 2.

(3) The employer may determine the period when each employee may take the vacation provided for in subsection 2 but the period shall not be later than ten months after the conclusion of the working year.

(4) The amount of pay for the vacation given to an employee in respect of each working year under subsection 2 shall not be less than an amount equal to two per cent of the pay received by the employee for all work done by him in the working year. 1947, c. 47, s. 1.

Supervisors
and
confidential
employees
exempted.

3. Subsection 1 of section 2 shall not apply to a person holding a position of supervision or management or employed in a confidential capacity so long as the duties performed by him are entirely of a supervisory, managerial or confidential character and do not include any work or duty customarily performed by an employee and in case of dispute as to whether a person holds such a position or is so employed, the decision of the Board shall be final. 1944, c. 26, s. 3.

Agreements.

4. Where in the opinion of the Board it is not feasible to apply subsection 1 of section 2 or the regulations in an industrial undertaking or branch thereof the Board may by order authorize such daily and weekly limit of working hours in the industrial undertaking or branch or by any class or group of employees, as may be agreed upon in writing between organizations or representatives of the employees and employers affected and as the Board may deem proper. 1944, c. 26, s. 4.

War
industries.

5. Where in the opinion of the Board any industrial undertaking or branch thereof is a war industry and it is not feasible to apply subsection 1 of section 2 or the regulations, the Board may suspend subsection 1 of section 2 or any of the regulations with regard to such industrial undertaking or branch thereof or any class or group of employees so long as such industrial undertaking or branch continues to be a war industry, upon such terms and conditions as the Board deems advisable, or may, by order, authorize such working hours as it deems proper. 1944, c. 26, s. 5.

Accidents,
exemptions.

6. The limit of hours of work prescribed by subsection 1 of section 2 may be exceeded in case of accident, or in case of work urgently required to be done to machinery or plant, or in case of force majeure, but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking. 1944, c. 26, s. 6.

Inquiry into
partnership,
association
or scheme.

7.—(1) The Board may hold an inquiry into the facts respecting any persons engaged or working in or about an industrial undertaking as members or alleged members of a partnership or association, or in the execution of any agreement or scheme of profit-sharing or co-operative or joint contract or undertaking, including the investigation of the contractual and other relations of the persons so engaged or working, as between themselves or as between them and their master or employer, and if the Board is of opinion that the partnership, association, agreement or scheme is intended or has the effect, either directly or indirectly, of defeating the true intent and object of this Act the Board may make such order as it deems proper declaring any of such persons or any

class or group thereof to be employers and any of such persons or any class or group thereof to be employees for the purposes of this Act.

(2) For the purposes of any such inquiry the chairman of the Board shall have all the powers which may be conferred upon a commissioner under *The Public Inquiries Act*. 1944, c. 26, s. 7. Powers of chairman on inquiry. Rev. Stat., c. 308.

8.—(1) Every employer shall, on demand of the Board or of the chairman or of any person authorized in writing by the Board or by the chairman, produce for inspection all records kept by him relating to the hours of labour of any person employed by him. Production of records.

(2) The Board may by notice in writing require any employer forthwith, or within a time stated in the notice, to make provision for the true and correct recording of the hours of work of each of his employees, with respect to starting-time, stopping-time and rest intervals, by means of time-clocks or in such manner as the Board may direct. 1944, c. 26, s. 8. Time-clocks.

9.—(1) The Board or any member thereof, or any person authorized in writing by the chairman, may, Inspection and production of records.

(a) inspect and examine all books, pay-rolls and other records of any employer which in any way relate to the hours of labour of any of his employees;

(b) take extracts from or make copies of any entry in such books, pay-rolls and records;

(c) require any employer to make or furnish full and correct statements, either orally or in writing in such form as may be required, respecting the hours of work of any of his employees, and require the statements to be made by the employer on oath or to be verified by his statutory declaration;

(d) require any employee to make full disclosure, production or delivery to the Board, or to the person so authorized, of all records, documents, statements, writing, books or papers, or extracts therefrom or copies thereof, or other information either verbal or in writing, as the employee may have in his possession or under his control and either verified on oath or otherwise as may be directed, which may in any way relate to his hours of work as an employee.

(2) Every member of the Board and every person authorized pursuant to subsection 1 shall have power to administer all Power to administer oaths.

oaths and take all affidavits and statutory declarations required or authorized to be made under subsection 1, and to certify to the administration or taking thereof. 1944, c. 26, s. 9.

Regulations.

10. Subject to the approval of the Lieutenant-Governor in Council, the Board may make regulations,

- (a) prescribing any establishment, undertaking or work in or about any business, trade or occupation which shall be deemed to be an industrial undertaking for the purposes of this Act;
- (b) prescribing industrial undertakings and branches thereof in which the working hours prescribed by subsection 1 of section 2 may be exceeded either by specified times or under specified conditions or generally, prescribing, in each case, the maximum of such excess and imposing terms and conditions in connection therewith; 1944, c. 26, s. 10, cls. (a, b).
- (c) prescribing the maximum number of hours which may elapse between the commencement and the termination of the daily work period or periods of an employee; 1946, c. 40, s. 1, *part*.
- (d) for the purposes of subsection 2 of section 2, prescribing the working year in any industry in terms of weeks, days or hours with all reasonable allowances for overtime work, seasonal employment and other special conditions and where the working year is less than the equivalent of eight months of work at normal hours, providing for the pro-rationing of the vacation referred to in such subsection;
- (e) providing for the application of subsection 2 of section 2 where, owing to illness or other unavoidable absence an employee has been absent from his employment, and such other regulations as it may deem necessary for the due application and administration of such subsection; 1944, c. 26, s. 10, cls. (c, d).
- (f) providing, in lieu of a vacation with pay, for the payment to an employee who has ceased to be employed by an employer, of an amount equal to two per cent of his total earnings for the period in respect of which he is entitled to a vacation with pay, and fixing the minimum periods of employment to which a regulation made under this clause shall apply;
- (g) providing for a system of vacation-with-pay credit stamps for use in such industrial undertakings as may

be designated and providing for the sale and redemption of such stamps; 1947, c. 47, s. 2.

- (h) requiring employers in any industrial undertaking or branch thereof to notify employees, by the publication of such notices as it may determine or in such other manner as it may prescribe, of the provisions of this Act, any regulations or orders made hereunder, particulars of hours of work including the hours at which work begins and ends, the hours at which shifts change, particulars of rest periods and such other information as may be prescribed;
- (i) prescribing the records which shall be kept and the returns which shall be made by employers. 1944, c. 26, s. 10, cls. (e, f).

11.—(1) Every employer who employs any person or permits any employee to work contrary to this Act or any regulations or order made hereunder, shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$25 and not more than a total of \$5 in respect of each employee for each day during the continuance of the contravention. Penalty, employers.

(2) Every employer who fails to comply with any provision of this Act or the regulations or of any order or requirement of the Board shall be guilty of an offence and on summary conviction if no other penalty is provided shall be liable to a penalty of not less than \$25 and not more than \$500. Idem.

(3) Every employee who fails to comply with any provision of this Act or the regulations or order made hereunder shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$10 and not more than \$25. 1944, c. 26, s. 11. Penalty, employees.

12.—(1) In addition to the penalty imposed on any employer for failure to grant a vacation with pay to any employee, the magistrate may order the employer to pay to the employee an amount equal to the pay he would have received for such vacation or the amount to which he would be entitled under the regulations. Additional penalty.

(2) An order made under subsection 1 shall be filed in a division court where, Filing of order.

- (a) the conviction upon which the order is based,
 - (i) is not appealed from within the time prescribed therefor, or

(ii) is confirmed upon appeal; and

Rev. Stat.,
c. 106.

(b) the fee prescribed under *The Division Courts Act* is paid to the clerk of the division court,

and such order shall thereupon be of the same force and effect as a judgment in the division court. 1947, c. 47, s. 3.

Conflict
with other
Acts.

13. Where there is conflict between the provisions of this Act or any regulation or order made hereunder and the provisions of any other Act of the Legislature or any regulation made thereunder, the provision which provides for shorter working hours shall prevail and in all questions of doubt or dispute the decision of the Board shall be final. 1944, c. 26, s. 12.

Expenses
of adminis-
tration.

14. The expenses incurred in the administration of this Act shall be paid out of such amounts as may be appropriated therefor by the Legislature. 1944, c. 26, s. 13.

CHAPTER 174

— The Housing Development Act

1. In this Act,Interpre-
tation.

- (a) "building development" means a project designed to furnish housing accommodation with or without public buildings, recreational facilities, industrial and commercial buildings or space appropriate therefor, and includes a plan for the re-development of land devoted to urban uses designed to increase and improve the housing accommodation thereon; and
- (b) "building development corporation" means a corporation authorized to undertake a building development that is approved by the Lieutenant-Governor in Council, and includes any authority established by a municipality to undertake a building development. 1948, c. 44, s. 1.

2. The Lieutenant-Governor in Council may guarantee money loaned to persons by corporations authorized to loan money where the money so loaned is to be used in the construction of housing accommodation. 1948, c. 44, s. 2.

Govern-
ment may
guarantee
housing
loans.

3. The Lieutenant-Governor in Council may make grants in aid of any building development. 1948, c. 44, s. 3.

Government
may make
grants.

4. The Lieutenant-Governor in Council may advance moneys or guarantee moneys to be advanced to any building development corporation undertaking a building development. 1948, c. 44, s. 4.

Government
may assist
in financing.

5. Notwithstanding any other Act, any municipality, with the approval of the Lieutenant-Governor in Council, may advance moneys or guarantee moneys to be advanced to any building development corporation undertaking a building development, and may issue debentures therefor. 1948, c. 44, s. 5.

Municipali-
ties may
assist in
financing.

6.—(1) The Crown in right of Ontario represented by the Minister of Planning and Development may make agreements with the Crown in right of Canada represented by the Minister of Resources and Development or such other Minister as may be authorized in that behalf, respecting joint projects

Joint
housing
projects
authorized.

for the acquisition and development of land for housing purposes and for the construction of houses for sale or for rent as contemplated in section 35 of *The National Housing Act, 1944* (Canada).

1944-45,
c. 46, s. 35
(1949, c. 30,
s. 9) (Can.).

Management
corpora-
tions.

(2) The Lieutenant-Governor in Council may constitute bodies corporate and politic with such powers and duties as may be deemed expedient to carry out any of the terms of any agreement made under subsection 1, including power to plan, construct and manage any joint housing project undertaken under any such agreement and including power to acquire and dispose of land in its own name.

Provincial
share of cost.

(3) Any moneys required to be furnished by the Crown in right of Ontario under any agreement made under subsection 1 shall be paid out of the Consolidated Revenue Fund.

Municipal
contribu-
tions.

(4) Any municipal corporation in or near which any joint housing project is undertaken may contribute to any moneys required to be furnished by the Crown in right of Ontario under any agreement made under subsection 1, and any such municipal corporation may, without the assent of the electors but subject to the approval of the Ontario Municipal Board, raise money therefor by the issue of debentures.

Payment for
lost taxes.

(5) The Crown in right of Ontario may pay annually to any municipality in which any joint housing project is undertaken a sum of money not in excess of an amount that in the opinion of the Minister of Municipal Affairs is equivalent to the sum of money that would have been paid to the municipality as taxes on lands acquired for any such project.

Power to
expedite
develop-
ment of
projects.

(6) Notwithstanding any other Act, the Lieutenant-Governor in Council may authorize any municipality in or near which any joint housing project is undertaken to do or not to do such acts or things as may be deemed expedient in order to avoid undue delay in the development of any such project, including the furnishing of municipal services. 1950, c. 28, s. 1, *part*.

Government
moneys to
be paid out
of Con. Rev.
Fund.

7. The moneys required by the Lieutenant-Governor in Council for the purposes of this Act shall be paid out of the Consolidated Revenue Fund. 1948, c. 44, s. 6.

Cost of
administra-
tion.

8. The cost of administration of this Act shall be paid out of the Consolidated Revenue Fund. 1948, c. 44, s. 7.

Administra-
tion of Act.

9. This Act shall be administered by the Minister of Planning and Development or such other member of the

Executive Council to whom it may be assigned by the Lieutenant-Governor in Council. 1948, c. 44, s. 8.

10.—(1) Notwithstanding subsection 2 of section 2 of *The Companies Act*, Housing Corporation Limited, being a corporation incorporated by letters patent dated the 29th day of April, 1948, for the purpose and objects of lending and investing money on mortgage of real estate, may issue bonds, debentures or debenture stock. Housing Corporation Ltd., power to issue bonds, etc. Rev. Stat., c. 59.

(2) The Lieutenant-Governor in Council may authorize the Treasurer of Ontario to purchase or to guarantee the payment of any notes, bonds, debentures or debenture stock issued by Housing Corporation Limited. 1950, c. 28, s. 1, *part*. Provincial guarantee, etc.

11. The Lieutenant-Governor in Council may make regulations, Regulations.

- (a) prescribing the terms and conditions upon which money may be granted, advanced or guaranteed under this Act; and
 - (b) providing for the incorporation, constitution and management of building development authorities. 1948, c. 44, s. 9.
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CHAPTER 175

The Income Tax Act

PART I—INCOME TAX

DIVISION A—LIABILITY FOR TAX

1.—(1) An income tax shall be paid as hereinafter required upon the tax payable under Part I of *The Income Tax Act* (Canada) for each taxation year by every individual resident in Ontario at any time in the year. Residents. 1948, c. 52 (Can.).

(2) Where an individual who is not taxable under subsection 1 for a taxation year, Non-residents employed or carrying on business in Ontario.

(a) was employed in Ontario at any time in the year; or

(b) carried on business in Ontario at any time in the year,

an income tax shall be paid as hereinafter required upon the tax payable under Part I of *The Income Tax Act* (Canada) for each taxation year. 1950, c. 29, s. 1.

2.—(1) The tax payable under this Part for a taxation year shall be five per cent of the tax payable under section 31 of *The Income Tax Act* (Canada) for the same taxation year. Rate.

(2) For the purpose of subsection 1, the tax payable under section 31 of *The Income Tax Act* (Canada) means the tax otherwise payable under Part I of *The Income Tax Act* (Canada). 1950, c. 29, s. 2. Idem.

DIVISION B—APPLICATION OF THE INCOME TAX ACT
(CANADA)

3. For the purposes of this Act, all the provisions of *The Income Tax Act* (Canada) comprising, Application of 1948, c. 52 (Can.).

(a) Part I, except Divisions F, I and J;

(b) Part V; and

(c) Part VI,

affecting the tax payable under Part I of that Act by an individual taxable under this Act, as they from time to time apply, shall apply *mutatis mutandis* under this Act, provided

1948, c. 52
(Can.).

that in this Act the Treasurer and Controller shall exercise the powers and duties conferred and imposed upon the Minister and the Deputy Minister, respectively, under *The Income Tax Act* (Canada). 1950, c. 29, s. 3.

DIVISION C—RETURNS, ASSESSMENTS,
PAYMENT AND APPEALS

Returns,

4.—(1) A return of the tax payable for each taxation year for which a tax is payable under this Act shall, without notice or demand therefor, be filed with the Controller in prescribed form and containing prescribed information,

deceased
persons;

(a) in the case of a taxpayer who has died without making the return, by his legal representative, within six months from the day of death;

trusts or
estates;

(b) in the case of an estate or trust, within 90 days from the end of the year;

individuals;

(c) in the case of any other taxpayer, on or before the 30th day of April, in the next year, by that individual or, if he is unable for any reason to file the return, by his guardian, committee or other legal representative; or

designated
persons.

(d) in a case where no person described by clause *a*, *b* or *c* has filed the return, by such person as is required by notice in writing from the Controller to file the return, within such reasonable time as the notice specifies.

Demand for
returns.

(2) Every taxpayer, whether or not he is liable to pay tax under this Part for a taxation year and whether or not he has filed a return under subsection 1, shall, upon receipt at any time of a demand therefor in writing from the Treasurer or any person thereunto authorized by the Treasurer, file forthwith with the Controller a return of his tax for the year in the prescribed form and containing prescribed information.

Trustees,
etc.

(3) Every trustee in bankruptcy, assignee, liquidator, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of a taxpayer who has not filed a return for a taxation year as required by this section shall file a return in the prescribed form of the tax payable by that taxpayer for that year.

Death of a
partner or
proprietor.

(4) Where a taxpayer who is a partner in or is a proprietor of a business died after the close of a fiscal period but before the end of the calendar year in which the fiscal period closed,

a separate return of the tax payable for the period following the close of the fiscal period to the time of death shall be filed and the tax payable under this Part shall be paid as if such tax were the tax payable by another taxpayer. 1950, c. 29, s. 4.

5. Every taxpayer or person required by section 4 to file a return shall in the return estimate the amount of tax payable. ^{Estimate of tax.} 1950, c. 29, s. 5.

6.—(1) The Treasurer shall, with all due despatch, examine each return and assess the tax for the taxation year and the interest and penalties, if any, payable. ^{Rules re assessment.}

(2) After examination of the return, the Treasurer shall send a notice of assessment to the taxpayer or person by whom the return was filed. ^{Idem.}

(3) Liability for tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. ^{Idem.}

(4) The Treasurer may at any time assess tax, interest or penalties and may, ^{Idem.}

(a) at any time, if the taxpayer or person filing the return has made any misrepresentation or committed any fraud in filing the return or supplying information under this Act; and

(b) within six years from the day of the original assessment in any other case,

re-assess or make additional assessments.

(5) The Treasurer is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part. ^{Idem.}

(6) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to re-assessment, be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto. 1950, c. 29, s. 6. ^{Idem.}

7.—(1) Every person paying salary or wages or other remuneration to an officer or employee, a superannuation or pension benefit, a retiring allowance, an annuity payment, ^{Withholding tax.}

director's fee or fees, commissions or other amounts for services, at any time in a taxation year shall deduct or withhold therefrom such amount as may be prescribed and shall, within one week of the day when he became liable to make the payment or at such other time as may be prescribed, remit that amount to the Treasurer on account of the tax payable by the payee for the year under this Part.

Payment of remainder.

(2) Where amounts have been deducted or withheld under this section from the remuneration received by a taxpayer in a taxation year, if the total of such amounts equals or is greater than three-quarters of the tax payable under this Part, he shall, on or before the 30th day of April in the next year, pay to the Treasurer the remainder of his tax for the year as estimated under section 5. 1950, c. 29, s. 7.

Farmers and fishermen.

8. Every taxpayer, the chief source of income of whom is farming or fishing, shall pay to the Treasurer,

- (a) on or before the 31st day of December in each taxation year, two-thirds of the tax as estimated by him for the year or of the tax payable by him for the immediately preceding year; and
- (b) on or before the 30th day of April in the next year, the remainder of the tax as estimated under section 5. 1950, c. 29, s. 8.

Other individuals.

9. Every taxpayer, other than one to whom subsection 2 of section 7 or section 8 applies, shall pay to the Treasurer,

- (a) on or before the 31st day of March, the 30th day of June, the 30th day of September and the 31st day of December, respectively, in each taxation year, an amount equal to one-quarter of the tax as estimated by him for the year or of the tax payable by him for the immediately preceding year; and
- (b) on or before the 30th day of April in the next year, the remainder of the tax as estimated under section 5. 1950, c. 29, s. 9.

Payment of remainder.

10.—(1) Every taxpayer shall, within 30 days from the day of the mailing of the notice of assessment, pay to the Treasurer any part of the assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or appeal from the assessment is outstanding.

Idem.

(2) Where, in the opinion of the Treasurer, a taxpayer is attempting to avoid payment of taxes, the Treasurer may direct that all taxes, penalties and interest be paid forthwith upon assessment. 1950, c. 29, s. 10.

11.—(1) Every person required by section 4 to file a return of the tax payable by any other taxpayer for a taxation year shall, within 30 days of mailing of the notice of assessment, pay all taxes, penalties and interest payable by or in respect of that taxpayer to the extent that he has or had, at any time since the taxation year, in his possession or control property belonging to that taxpayer or his estate and shall thereupon be deemed to have made that payment on behalf of such taxpayer. Payment on behalf of others.

(2) Every assignee, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, before distributing any property under his control, shall obtain a certificate from the Treasurer certifying that there are not outstanding any taxes, interest or penalties that have been assessed under this Act and are chargeable against or payable out of the property. Certificate before distribution.

(3) Distribution of property without a certificate required by subsection 2 renders the person required to obtain the certificate personally liable for the unpaid taxes, interest and penalties. 1950, c. 29, s. 11. Liability.

12.—(1) Where the amount paid on account of tax payable by a taxpayer under this Part for a taxation year before the expiration of the time allowed for filing the return of the tax payable by such taxpayer is less than the amount of tax payable for the year under this Part, such taxpayer shall pay interest on the difference between those two amounts from the expiration of the time for filing the return to the day of payment at six per cent per annum. Interest, general;

(2) In addition to the interest payable under subsection 1, where a taxpayer, being required by this Part to pay a part or instalment of tax, has failed to pay all or any part thereof as required, he shall, on payment of the amount he failed to pay, pay interest at six per cent per annum from the day on or before which he was required to make the payment to the day of payment or the beginning of the period in respect of which he becomes liable to pay interest thereon under subsection 1, whichever is earlier. on instalments.

(3) For the purposes of subsection 2, where a taxpayer is required to pay a part or instalment of tax for a taxation year, as payable by him for a preceding year or estimated by him for the taxation year, he shall be deemed to have been liable to pay a part or instalment computed by reference to the tax payable, Limitation.

(a) for the preceding year; or

(b) for the taxation year,

whichever is the lesser.

Participation
certificates.

(4) Notwithstanding any other provision in this section, no interest is payable in respect of the amount by which the tax payable by a taxpayer is increased by a payment made by the Canadian Wheat Board on a participation certificate previously issued to him until 30 days after the payment is made.

Limitation
on interest
period.

(5) No interest under this section upon the amount by which the unpaid taxes exceed the amount estimated under section 5 is payable in respect of the period beginning 12 months after the day fixed by this Act for filing the return or 12 months after the return was actually filed, whichever was later, and ending 30 days from the day of mailing of the notice of the original assessment for the taxation year. 1950, c. 29, s. 12

Penalties,
delay in
making
returns.

13.—(1) Every taxpayer who has failed to make a return as and when required by subsection 1 of section 4 is liable to a penalty of,

(a) an amount equal to five per cent of the tax that was unpaid when the return was required to be filed, if the tax payable under this Part that was unpaid at that time was less than \$10,000; and

(b) \$500, if, at the time the return was required to be filed, tax payable under this Part equal to \$10,000 or more was unpaid.

Idem.

(2) Every person who has failed to file a return as required by subsection 3 of section 4 is liable to a penalty of \$10 for each day of default but not exceeding \$50.

Failure to
complete in-
formation.

(3) Every person who has failed to complete the information on a prescribed form as required by or pursuant to section 4 is, unless in the case of a taxpayer the Treasurer has waived it, liable to a penalty,

(a) of one per cent of the tax payable under this Part but, whether he is taxable or not, not less than \$25 or more than \$100; or

(b) in the case of a taxpayer, of such lesser amount as the Treasurer may have fixed in respect of the specific failure. 1950, c. 29, s. 13.

14.—(1) The Treasurer may, upon mailing the notice of assessment, refund, without application therefor, any overpayment made on account of the tax and he shall make such a refund after mailing the notice of assessment if application in writing is made therefor by the taxpayer within 12 months from the day the overpayment was made or the day on which the notice of assessment was sent, whichever is the later. Refunds.

(2) Instead of making a refund that might otherwise be made under this section, the Treasurer may, where the taxpayer is liable or about to become liable to make another payment under this Act, apply the amount of the overpayment to that other liability and notify the taxpayer of that action. Application to other taxes.

(3) Where an amount in respect of an overpayment is refunded or applied on other liability under this section, interest shall be paid or applied for the period commencing, Interest on overpayment.

- (a) on the day when the overpayment arose;
 - (b) on the day on or before which the return in respect of which the tax was paid was required to be filed; or
 - (c) on the day that the return was actually filed,
- whichever was later, and ending with the day of refunding or application aforesaid at the rate of,
- (d) two per cent per annum on the amount of the overpayment or \$5,000, whichever is lesser; and
 - (e) one-half of one per cent per annum on any part of the overpayment in excess of \$5,000,

unless the amount of the interest so calculated is less than \$1, in which event no interest is payable under this subsection.

(4) For the purpose of this section, the term "overpayment" means the aggregate of all amounts paid on account of tax minus all amounts payable under this Act or an amount so paid where no amount is so payable. 1950, c. 29, s. 14. Interpretation.

15.—(1) A taxpayer who objects to an assessment under this Act may, within 60 days from the day of mailing the notice of assessment, serve on the Treasurer a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts. Notice of objection.

(2) A notice of objection under this section shall be served by being sent by registered mail to the Treasurer. Service.

Re-consider-
ation.

(3) Upon receipt of the notice of objection, the Treasurer shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or re-assess and he shall thereupon notify the taxpayer of his action by registered mail. 1950, c. 29, s. 15.

Appeal.

16. Where a taxpayer has served notice of objection to an assessment under section 15, he may appeal to the tax appeal board constituted under section 19 to have the assessment vacated or varied after either,

- (a) the Treasurer has confirmed the assessment or re-assessed; or
- (b) 180 days have elapsed after service of the notice of objection and the Treasurer has not notified the individual that he has vacated or confirmed the assessment or re-assessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 15 that the Treasurer has confirmed the assessment or re-assessed. 1950, c. 29, s. 16.

Appeal.

17.—(1) The Treasurer or the taxpayer may, within 120 days from the day on which the registrar of the tax appeal board mails the decision on an appeal under section 16 to the Treasurer and the taxpayer, appeal to the Supreme Court.

Procedure.

(2) All matters in connection with an appeal under this section shall be regulated under the rules of the Supreme Court. 1950, c. 29, s. 17.

Irregulari-
ties.

18. An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act. 1950, c. 29, s. 18.

DIVISION D—TAX APPEAL BOARD

Tax appeal
board con-
stituted.

19. There is hereby constituted a tax appeal board to be appointed by the Lieutenant-Governor in Council, consisting of the following members, namely, a chairman and not less than two or more than four other members of whom one may be appointed as assistant chairman. 1950, c. 29, s. 19.

Qualifica-
tions.

20.—(1) No person shall be appointed chairman or assistant chairman unless he is,

- (a) a judge of a superior, county or district court in Ontario; or
- (b) a barrister of at least 10 years standing at the Bar of Ontario,

but, if a person who is a judge is appointed chairman or assistant chairman, he shall cease to hold office 90 days after his appointment unless,

- (c) within that time he has resigned from his office as judge; or
- (d) his appointment as chairman or assistant chairman was for a period not exceeding two years and he has been granted leave of absence without pay for that period from his office as a judge.

(2) No person who has attained the age of 65 years shall Age limit. be appointed a member.

(3) Where the chairman, assistant chairman or any other member is ill or otherwise unable to act, or where his office is In case of illness or vacancy. vacant, the Lieutenant-Governor in Council may appoint some person qualified to hold the office to act in his stead during his illness or incapacity or until the office is filled, as the case may be.

(4) The chairman, the assistant chairman and the members Salaries. shall be paid such salaries as are determined by the Lieutenant-Governor in Council.

(5) Every member shall be paid allowances for travelling Travelling allowances. as are determined by the Lieutenant-Governor in Council.

(6) A person having the qualifications provided by sub-section 1 for the chairman or assistant chairman may be Hearing officers. appointed by the Lieutenant-Governor in Council a hearing officer for an appeal or group of appeals and paid such remuneration and expenses as may be determined by the Lieutenant-Governor in Council. 1950, c. 29, s. 20.

21. The board may, subject to the approval of the Board may make rules. Lieutenant-Governor in Council, make rules not inconsistent with this Act governing the carrying on of the business of the board and practice and procedure in connection with appeals. 1950, c. 29, s. 21.

22.—(1) The chairman or assistant chairman and not less Quorum. than one-half of the other members of the board are a quorum.

Appeal hearing by two or more members.

(2) The chairman or the board may direct that an appeal be heard and determined on behalf of the board, by the chairman or assistant chairman and one or more other members who shall have for the hearing and determination of the appeal all powers of the board.

Reference to full board.

(3) The members nominated to hear and determine an appeal may at any stage refer the appeal to the board and the board shall then in its discretion hear and determine the appeal or determine the appeal on the report of such members if the report was made after hearing the parties.

Taking evidence by hearing officer.

(4) Where an appeal is to be determined by the board, the chairman or the board may direct that evidence relating to the appeal, in whole or in part, be received by a hearing officer, the chairman or the assistant chairman, and the board shall, after,

(a) receiving the report of the hearing officer, the chairman or the assistant chairman; and

(b) holding a rehearing in whole or in part if in its discretion it deems it advisable so to do,

determine the appeal.

Powers of hearing officer, etc.

(5) A hearing officer, the chairman or the assistant chairman has all the powers of the board for the purpose of taking evidence pursuant to this section. 1950, c. 29, s. 22.

How appeal instituted.

23.—(1) An appeal to the board shall be instituted by serving upon the Treasurer a notice of appeal in triplicate in such form as may be determined by the rules and the Treasurer shall forthwith forward a copy of the notice to the board.

Notice of appeal.

(2) The notice of appeal shall be served upon the Treasurer by being sent by registered mail to the Controller.

Copies of documents.

(3) Immediately after receiving the notice of appeal, the Treasurer shall forward to the board copies of all documents relevant to the assessment. 1950, c. 29, s. 23.

Fee upon filing of notice of appeal.

24.—(1) An appellant shall pay to the Treasurer a fee of \$15 upon the serving of the notice of appeal and if the appeal is allowed, in whole or in part, the fee shall be returned to the appellant forthwith after disposition of the appeal but not otherwise.

No other fees or costs.

(2) Subject to subsection 1, no costs may be awarded on the disposition of an appeal and no fees may be charged the appellant by the board.

(3) Subject to subsection 1, fees paid under this section shall be retained in the Consolidated Revenue Fund. 1950, c. 29, s. 24. Disposition of fees.

25.—(1) The Treasurer and the appellant may appear in person or may be represented at the hearing by counsel or an agent or, with the consent of the Treasurer and the appellant, the board or the chairman may order that written submissions be filed in addition to or in place of an oral hearing. Treasurer and appellant may appear in person or be represented.

(2) An appeal may, in the discretion of the board, the chairman, the assistant chairman or hearing officer, as the case may be, be heard *in camera* or in public unless the appellant requests that it be heard *in camera* in which case it shall be so heard. Hearing may be in camera

(3) The board is a court of record and may, To be court of record.

(a) summon before it any witness and require him to give evidence orally or in writing on oath or otherwise and to produce such documents and things as it deems requisite to the full investigation of the facts in issue; and

(b) enforce the attendance of witnesses and compel them to give evidence.

(4) The chairman may, subject to the rules and this Division, determine the procedure to be followed on an appeal. 1950, c. 29, s. 25. Procedure.

26.—(1) The board may dispose of an appeal by, Disposal of appeal.

(a) dismissing it;

(b) vacating the assessment;

(c) varying the assessment; or

(d) referring the assessment back to the Treasurer for reconsideration and re-assessment.

(2) Where an appeal is from an assessment or re-assessment made pursuant to a direction under section 126 of *The Income Tax Act* (Canada) as made applicable to this Act by section 3 hereof, the board has no jurisdiction to vacate or vary the assessment in so far as it is made in accordance with that direction; and, if it appears that the only matter at issue in the appeal is whether one of the purposes of the transaction or transactions was the avoidance or reduction of taxes, the board shall forthwith dismiss the appeal. Limitation of power of board. 1948, c. 52, (Can.).

Copy of
decision to
Treasurer
and
appellant.

(3) The registrar shall, upon the disposition of an appeal, forward by registered mail a copy of the decision and the reasons therefor to the Treasurer and the appellant. 1950, c. 29, s. 26.

Registrar
and deputy.

27.—(1) The Lieutenant-Governor in Council may appoint a registrar and a deputy registrar and fix their salaries.

Officers,
clerks and
employees.

Rev. Stat.,
c. 317.

(2) Such other officers, clerks and employees as may be required to carry on the business of the board shall be appointed under *The Public Service Act*.

Control by
registrar.

(3) The registrar, or in his absence the deputy registrar, shall control and supervise the other persons employed under this section. 1950, c. 29, s. 27.

Offices.

28.—(1) The registrar, with the approval of the chairman, shall establish such office or offices as are required for the use of the members and staff of the board and provide therefor the necessary accommodation, furnishings, stationery, equipment and telephones and shall arrange for the necessary accommodation for the hearing of appeals.

Publica-
tion of
decisions.

(2) The registrar shall, under the control and direction of the chairman, make available for publication all decisions of the board. 1950, c. 29, s. 28.

Expenses.

29. The registrar shall, with the approval of the chairman, incur all expenses necessary for the carrying on of the business of the board and the hearing of appeals. 1950, c. 29, s. 29.

Provision
for expenses
and salaries.

30. All expenses and salaries under this Division shall be paid out of the Consolidated Revenue Fund. 1950, c. 29, s. 30.

Interpre-
tation.

31. In this Division,

- (a) "assistant chairman" means the assistant chairman of the board;
- (b) "board" means the tax appeal board;
- (c) "chairman" means the chairman of the board;
- (d) "member" means a member of the board;
- (e) "rule" means a rule made under section 21. 1950, c. 29, s. 31.

DIVISION E—APPEALS TO THE SUPREME COURT OF ONTARIO

32.—(1) An appeal to the court shall be instituted by serving upon the taxpayer or the Treasurer, as the case may be, a notice of appeal in triplicate in such form as may be determined by the rules and filing a copy thereof with the registrar of the tax appeal board.

Appeals to the court, how instituted.

(2) A notice of appeal shall be served upon the Treasurer by being sent by registered mail to the Controller and may be served upon the taxpayer either personally or by being sent to him at his last known address by registered mail.

Notice of appeal.

(3) The appellant shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and reasons which the appellant intends to submit in support of his appeal.

Statement of allegations.

(4) An appeal by a taxpayer and all proceedings thereunder are, upon the expiration of 30 days from the day the appeal is instituted, null and void unless security for the costs of the appeal has been, within the said period, given to the satisfaction of the Treasurer in a sum of not less than \$400 and, upon an appeal becoming null and void by virtue of this section, no further appeal can be instituted in respect of the same decision.

Security for costs.

(5) When security has been given under subsection 4, notice thereof in such form as may be determined by the rules shall be filed with the registrar of the tax appeal board. 1950, c. 29, s. 32.

Notice of security.

33.—(1) The respondent shall, within 60 days from the day the notice of appeal is received, or within such further time as the court or a judge thereof may either before or after the expiration of that time allow, serve on the appellant and file in the court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as the respondent intends to rely on.

Reply to appeal.

(2) The court or a judge may, in its or his discretion, strike out a notice of appeal or any part thereof for failure to comply with subsection 3 of section 32 and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

Amendment of notice of appeal.

(3) The court or a judge may, in its or his discretion,

Amendment to reply.

- (a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply; and

- (b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time to be fixed by the order.

Failure to comply.

(4) Where a notice of appeal is struck out for failure to comply with subsection 3 of section 32 and a new notice of appeal is not filed as and when permitted by the court or a judge, the court or a judge thereof may, in its or his discretion, dispose of the appeal by dismissing it.

Idem.

(5) Where a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by the court or a judge within the time ordered, the court may dispose of the appeal *ex parte* or after a hearing on the basis that the allegations of fact contained in the notice of appeal are true. 1950, c. 29, s. 33.

Transmission of papers with transcript of proceedings.

34.—(1) The registrar of the tax appeal board shall,

- (a) in the case of an appeal by the Treasurer, upon receipt of the notice of appeal; and
- (b) in the case of an appeal by a taxpayer, upon receipt of the notice of appeal and of notice of the giving of security,

cause to be transmitted to the registrar of the court all papers filed with the board on the appeal thereto together with a transcript of the record of the proceedings before the board.

Action in court.

(2) Upon the filing of the material referred to in subsection 1 and of the reply required by section 33, the matter shall be deemed to be an action in the court and, unless the court otherwise orders, ready for hearing.

Facts not set out may be pleaded.

(3) Any fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in such manner and upon such terms as the court may direct.

Disposal of appeal.

(4) The court may dispose of the appeal by,

- (a) dismissing it;
- (b) vacating the assessment;
- (c) varying the assessment; or
- (d) referring the assessment back to the Treasurer for reconsideration and re-assessment. 1950, c. 29, s. 34.

Court may order payment of tax, etc.

35. The court may, in delivering judgment disposing of an appeal, order payment or repayment of tax, interest,

penalties or costs by the taxpayer or the Treasurer. 1950, c. 29, s. 35.

36. Proceedings under this Division shall be held *in camera* ^{Proceedings may be held in camera.} upon request made to the court by the taxpayer. 1950, c. 29, s. 36.

37. Rules otherwise applicable to practice and procedure ^{Rules of practice.} in the court shall be applicable to practice and procedure in appeals under this Division. 1950, c. 29, s. 37.

38. In this Division, "court" means the Supreme Court of ^{Interpretation.} Ontario. 1950, c. 29, s. 38.

PART II—ADMINISTRATION AND ENFORCEMENT

39.—(1) The Treasurer shall administer and enforce this ^{Treasurer's duty.} Act and control and supervise all persons employed to carry out or enforce this Act and the Controller may exercise all the powers and perform the duties of the Minister under this Act.

(2) The Lieutenant-Governor in Council may appoint such ^{staff.} officers and servants as are necessary to administer and enforce this Act and may fix their remuneration.

(3) The Treasurer may at any time extend the time for ^{Extensions for returns.} making a return under this Act.

(4) The Treasurer may, if he considers it advisable in a ^{Security.} particular case, accept security for payment of taxes by way of mortgage or other charge of any kind whatsoever on property of the taxpayer or any other person or by way of guarantee from other persons. 1950, c. 29, s. 39.

40. The Lieutenant-Governor in Council may make ^{Regulations.} regulations,

- (a) prescribing anything that, by this Act, is to be prescribed, determined or regulated by regulations;
- (b) prescribing the evidence required to establish facts relevant to assessments under this Act;
- (c) to facilitate the assessment of tax where deductions or exemptions of a taxpayer have changed in a taxation year;
- (d) requiring any class of persons to make information returns respecting any class of information required in connection with assessments under this Act;

- (e) authorizing a designated officer or class of officers to exercise powers or perform duties of the Treasurer or the Controller under this Act;
- (f) assigning the names of office of officers and other persons appointed under this Act;
- (g) requiring every person or every member of any group or class of persons ceasing to be a resident of Ontario to make application to the Treasurer for a certificate that there are not outstanding any assessed taxes, interest or penalties payable under this Act and that he is not in default in filing any return required by or under this Act;
- (h) defining the classes of persons who may be regarded as dependent for the purposes of this Act;
- (i) generally to carry out the purposes and the provisions of this Act. 1950, c. 29, s. 40.

Debts to His Majesty.

41. All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to His Majesty for the uses of Ontario and shall be recoverable in any court of competent jurisdiction or in any other manner provided by this Act. 1950, c. 29, s. 41.

Certificates.

42.—(1) An amount payable under this Act that has not been paid or such part of an amount payable under this Act as has not been paid may, upon the expiration of 30 days after the default, be certified by the Treasurer.

Judgments.

(2) On production to the Supreme Court, a certificate made under this section shall be registered in the court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in such court for a debt of the amount specified in the certificate plus interest to the day of payment as provided for in this Act.

Costs.

(3) All reasonable costs and charges attendant upon the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under this section. 1950, c. 29, s. 42.

Garnishment.

43.—(1) When the Treasurer has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment under this Act, he may, by registered letter, require him to pay the moneys otherwise payable to that person in whole

or in part to the Treasurer on account of the liability under this Act.

(2) The receipt of the Treasurer for moneys paid as required *Idem.* under this section is a good and sufficient discharge of the original liability to the extent of the payment.

(3) Where the Treasurer has, under this section, required *Idem.* an employer to pay to the Treasurer on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Treasurer out of each payment of remuneration of such amount as may be stipulated by the Treasurer in the registered letter.

(4) Every person who has discharged any liability to a *Idem.* person liable to make a payment under this Act without complying with a requirement under this section is liable to pay to His Majesty in right of Ontario an amount equal to the liability discharged or the amount which he was required under this section to pay to the Treasurer, whichever is the lesser. 1950, c. 29, s. 43.

44.—(1) Where a person has failed to make a payment as required by this Act, the Treasurer, on giving 10 days notice by registered mail addressed to his last known place of residence, may, whether or not there is an objection to or appeal in respect of the assessment not disposed of, issue a certificate of the failure and direct that the goods and chattels of the person in default be seized. Seizure of
chattels.

(2) Property seized under this section shall be kept for *Idem.* 10 days at the cost and charges of the owner and, if he does not pay the amount due together with the costs and charges within the 10 days, the property seized shall be sold by public auction.

(3) Except in the case of perishable goods, notice of the *Idem.* sale setting forth the time and place thereof, together with a general description of the property to be sold shall, a reasonable time before the goods are sold, be published at least once in one or more newspapers of general local circulation.

(4) Any surplus resulting from the sale after deduction of *Idem.* the amount owing and all costs and charges shall be paid or returned to the owner of the property seized,

Idem.

(5) Such goods and chattels of any person in default as would be exempt from seizure under a writ of execution issued out of the Supreme Court are exempt from seizure under this section. 1950, c. 29, s. 44.

Taxpayer
leaving
Ontario or
defaulting.

45.—(1) Where the Treasurer suspects that the taxpayer is about to leave Ontario, he may before the day otherwise fixed for payment, by notice served personally or by registered letter addressed to the taxpayer, demand payment of all taxes, interest and penalties for which the taxpayer is liable or would be liable if the time for payment had arrived and the same shall be paid forthwith notwithstanding any other provision of this Act.

Idem.

(2) Where a person has failed to pay tax, interest or penalties demanded under this section as required, the Treasurer may direct that the goods and chattels of the taxpayer be seized and subsections 2 to 5 of section 44 are, thereupon, applicable *mutatis mutandis*. 1950, c. 29, s. 45.

Withholding
taxes.

46.—(1) No action lies against any person for withholding or deducting any sum of money in compliance or intended compliance with this Act.

Idem.

(2) Every person whose employer is required to deduct or withhold any amount from his remuneration under section 7 shall, from time to time as prescribed, file a return with his employer in prescribed form.

Idem.

(3) Every person failing to file a form as required by subsection 2 is liable to have the deduction or withholding from his salary or wages under section 7 made as though he were an unmarried person without dependants.

Idem.

(4) Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for His Majesty in right of Ontario.

Idem.

(5) All amounts deducted or withheld by a person under this Act shall be kept separate and apart from his own moneys.

Idem.

(6) Every person who deducts or withholds an amount under this Act is liable to pay to His Majesty in right of Ontario on the day fixed by or pursuant to this Act an amount equal to the amount so deducted or withheld and this liability constitutes a first charge on his property and ranks for payment in priority to all other claims.

Idem.

(7) Where a person on whose behalf an amount has been paid to the Treasurer after having been deducted or withheld

under this Act was not liable to pay any tax under this Act or where the amount so paid to the Treasurer on his behalf is in excess of the tax that he was liable to pay, the Treasurer shall, upon application in writing made within two years from the end of the calendar year in which the amount was paid, pay to him the amount so paid or such part thereof as he was not liable to pay, unless he is otherwise liable or about to become liable to make a payment under this Act, in which case, the Treasurer may apply the amount otherwise payable under this subsection to that payment and notify him of that fact.

(8) Any person who has failed to deduct or withhold any *Idem.* amount as required by this Act or a regulation is liable to pay to His Majesty in right of Ontario,

(a) if the amount should have been deducted or withheld under subsection 1 of section 7 from an amount that has been paid to a person resident in Ontario, 10 per cent of the amount that should have been deducted or withheld; and

(b) in any other case, the whole amount that should have been deducted or withheld,

together with interest thereon at the rate of 10 per cent per annum.

(9) Every person who has failed to remit an amount *Idem.* deducted or withheld as required by this Act or a regulation is liable to a penalty of 10 per cent of that amount or \$10, whichever is the greater, in addition to the amount itself, together with interest on the amount at the rate of 10 per cent per annum.

(10) The Treasurer may assess any person for any amount *Idem.* that has been deducted or withheld under this Act or a regulation or that is payable under this section and, upon his sending a notice of assessment by registered mail to that person, Division C of Part I is applicable *mutatis mutandis*.

(11) Provisions of this Act requiring a person to deduct or *Idem.* withhold an amount in respect of taxes from amounts payable to a taxpayer are applicable to His Majesty in right of Canada or a province.

(12) Where this Act requires an amount to be deducted *Idem.* or withheld, an agreement by the person on whom that obligation is imposed not to deduct or withhold, is void.

(13) The receipt of the Treasurer for an amount withheld *Idem.* or deducted by any person as required by or under this Act

is a good and sufficient discharge of the liability of any debtor to his creditor with respect thereto to the extent of the amount referred to in the receipt. 1950, c. 29, s. 46.

Books and
records.

47.—(1) Every taxpayer carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account, including an annual inventory kept in the prescribed manner, at his place of business or residence in Ontario or at such other place as may be designated by the Treasurer, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

Idem.

(2) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Treasurer may require him to keep such records and books of account as he may specify and that person shall thereafter keep records and books of account as so required.

Idem.

(3) Every person required by this section to keep records and books of account shall, until written permission for their disposal is obtained from the Treasurer, retain every such record or book of account and every account or voucher necessary to verify the information in any such record or book of account. 1950, c. 29, s. 47.

Investiga-
tions.

48.—(1) Any person thereunto authorized by the Treasurer for any purpose related to the administration or enforcement of this Act may, at all reasonable times, enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or records are, or should be, kept pursuant to this Act, and,

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document which relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act;
- (b) examine property described by an inventory or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act;

(c) require the owner or manager of the property or business and any other person on the premises or place to give him all reasonable assistance with his audit or examination and to answer all proper questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, require the owner or manager to attend at the premises or place with him; and

(d) if, during the course of an audit or examination, it appears to him that there has been a violation of this Act or a regulation, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

(2) The Treasurer may, for any purpose related to the ^{Idem.} administration or enforcement of this Act, by registered letter or by a demand served personally require from any person,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as may be stipulated therein.

(3) The Treasurer may, for any purpose related to the ^{Search.} administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Treasury Department, together with such members of the Ontario Provincial Police Force or other police officers as he calls on to assist him and such other persons as may be named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things which may afford evidence as to the violation of any provision of this Act or a regulation and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

(4) The Treasurer may, for any purpose related to the ^{Inquiry.} administration or enforcement of this Act, authorize any person, whether or not he is an officer of the Treasury Department, to make such inquiry as he may deem necessary with reference to anything relating to the administration or enforcement of this Act.

Copies.

(5) Where any book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced or any officer of the Treasury Department may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Treasurer or a person thereunto authorized by the Treasurer to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it had been proven in the ordinary way.

Compliance.

(6) No person shall hinder or molest or interfere with any person doing anything that he is authorized by or pursuant to this section to do, or prevent or attempt to prevent any person doing any such thing, and notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by or pursuant to this section to do.

Powers.

(7) For the purpose of an inquiry authorized under subsection 4, the person authorized to make the inquiry has all the powers that may be conferred upon a commissioner appointed under *The Public Inquiries Act*. 1950, c. 29, s. 48.

Rev. Stat.,
c. 308.

Ownership
certificates.

49.—(1) Before a bearer coupon or warrant representing either interest or dividends payable by any debtor or cheque representing dividends or interest payable by a non-resident debtor, is negotiated by or on behalf of a resident of Ontario, there shall be completed by or on behalf of the resident an ownership certificate in the prescribed form.

Idem.

(2) An ownership certificate completed pursuant to subsection 1 shall be delivered in such manner, at such time and at such place as may be prescribed and a person who has failed to do so is liable on summary conviction to a fine of not less than \$10 and not more than \$100.

Idem.

(3) A person who has failed to complete an ownership certificate as required by or under this Act and a debtor or other person who has cashed a coupon or warrant for which an ownership certificate has not been completed, is liable on summary conviction to a fine of not less than \$10 and not more than \$100. 1950, c. 29, s. 49.

Penalty re
information
returns.

50. Every person who has failed to make a return as and when required by regulation under section 40 or by subsection 2 of section 46 is liable to a penalty of \$10 a day for each day of default but not more than \$2,500 in all. 1950, c. 29, s. 50.

51. A return, certificate or other document made by a corporation pursuant to this Act or a regulation shall be signed on its behalf by the president, secretary or treasurer of the corporation or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation. 1950, c. 29, s. 51.

52.—(1) Every person who has failed to file a return as and when required by or under this Act or a regulation is guilty of an offence and, in addition to any penalty otherwise provided, liable on summary conviction to a fine of not less than \$25 for each day of default.

(2) Every person who has failed to comply with or contravened subsection 1 of section 7, subsection 5 of section 46, section 47 or section 48 is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to,

- (a) a fine of not less than \$200 and not more than \$10,000; or
- (b) both the fine described in clause a and imprisonment for a term not exceeding six months.

(3) Where a person has been convicted under this section of failing to comply with a provision of this Act or a regulation, he is not liable to pay a penalty imposed under section 13, section 46 or section 50 for the same failure unless he was assessed for that penalty or that penalty was demanded from him before the information or complaint giving rise to the conviction was laid or made. 1950, c. 29, s. 52.

53.—(1) Every person who has,

Idem:

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer;
- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of a taxpayer;

- (d) wilfully, in any manner, evaded or attempted to evade, compliance with this Act or payment of taxes imposed by this Act; or
- (e) conspired with any person to commit an offence described by clauses *a* to *d*,

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to,

- (f) a fine of not less than \$25 and not more than \$10,000 plus, in an appropriate case, an amount not exceeding double the amount of the tax that should have been shown to be payable or that was sought to be evaded; or
- (g) both the fine described in clause *f* and imprisonment for a term of not more than two years.

Idem.

(2) Every person who is charged with an offence described by subsection 1 may, at the election of the Attorney-General of Ontario, be prosecuted upon indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to imprisonment for a term of not more than five years and not less than two months. 1950, c. 29, s. 53.

Communi-
cation of in-
formation.

54. Every person who, while employed in the service of His Majesty, has communicated or allowed to be communicated to a person not legally entitled thereto any information obtained under this Act or has allowed any such person to inspect or have access to any written statements furnished under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$200. 1950, c. 29, s. 54.

Officers, etc.,
of corpora-
tions.

55. Where a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. 1950, c. 29, s. 55.

Power to
decrease
punishment.

56. Notwithstanding any other statute or law in force at the commencement of this Act, the court has, in any prosecution or proceeding under this Act, no power to impose less than the minimum fine or imprisonment fixed by this Act and the court has no power to suspend sentence. 1950, c. 29, s. 56.

57.—(1) An information or complaint under this Act may be laid or made by any officer of the Treasury Department or by any person thereunto authorized by the Treasurer and, where an information or complaint purports to have been laid or made under this Act, it shall be deemed to have been laid or made by a person thereunto authorized by the Treasurer and shall not be called in question for lack of authority of the informant or complainant except by the Treasurer or by some person acting for him or for His Majesty. Information or complaint.

(2) An information or complaint in respect of an offence under this Act may be for one or more than one offence and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences. Two or more offences.

(3) A complaint or information in respect of an offence under this Act may be heard, tried or determined by any magistrate if the accused is resident, carrying on business, found or apprehended or is in custody within his jurisdiction although the matter of the information or complaint did not arise within his jurisdiction. Jurisdiction.

(4) An information or complaint under Part XV of the *Criminal Code* (Canada) in respect of an offence under this Act may be laid or made on or before a day five years from the time when the matter of the information or complaint arose or within one year from the day on which evidence, sufficient in the opinion of the Treasurer to justify a prosecution for the offence, came to his knowledge, and the Treasurer's certificate as to the day on which such evidence came to his knowledge is conclusive evidence thereof. Limitation of prosecution. R.S.C. 1927, c. 36.

(5) Where, by this Act or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Treasury Department sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records, that he has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed, indicating such address, and that he identifies as exhibits attached to the affidavit the post-office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, shall be received as *prima facie* evidence of the sending and of the request, notice or demand. Proof of service by mail.

(6) Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit Proof of failure to comply.

of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after a careful examination and search of the records he has been unable to find in a given case that the return, statement, answer or certificate, as the case may be, has been made by such person, shall be received as *prima facie* evidence that in such case that person did not make the return, statement, answer or certificate, as the case may be.

Proof of
time of
compliance.

(7) Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after careful examination of such records he has found that the return, statement, answer or certificate was filed or made on a particular day, shall be received as *prima facie* evidence that it was filed or made on that day and not prior thereto.

Proof of
documents.

(8) An affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that a document annexed thereto is a document or true copy of a document made by or on behalf of the Treasurer or some person exercising the powers of the Treasurer or by or on behalf of a taxpayer, shall be received as *prima facie* evidence of the nature and contents of the document and shall be admissible in evidence and have the same probative force as the original document would have if it had been proven in the ordinary way.

Proof of
no appeal.

(9) An affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of the records, he has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed therefor, shall be received as *prima facie* evidence of the statements contained therein.

Presump-
tion.

(10) Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Treasury Department, it is not necessary to prove his signature or that he is such an officer

nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

(11) Judicial notice shall be taken of all orders or regulations made under this Act without such orders or regulations being specially pleaded or proven. 1950, c. 29, s. 57. Judicial notice.

PART III

58.—(1) In this Act,

Interpretation.

- (a) "amount" means money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing;
- (b) "assessment" includes a re-assessment;
- (c) "Controller" means Controller of Revenue for Ontario;
- (d) "corporation" includes an incorporated company;
- (e) "employed" means performing the duties of an office or employment;
- (f) "employment" means the position of an individual in the service of some other person, including His Majesty or a foreign state or sovereign, and "servant" or "employee" means a person holding such a position;
- (g) "estate" means the trustee or the executor, administrator, heir or other legal representative having ownership or control of a trust or estate property;
- (h) "fiscal period" means the period for which the accounts of the business of the taxpayer has been ordinarily made up and accepted for purposes of assessment under this Act and, in the absence of an established practice, the fiscal period is that adopted by the taxpayer; provided that a fiscal period may not exceed a period of 12 months and that a change in a usual and accepted fiscal period may not be made for the purpose of this Act without the concurrence of the Treasurer;
- (i) "individual" means a person other than a corporation;
- (j) "inventory" means a description of property, the value of which is relevant in computing a taxpayer's income from a business for a taxation year;
- (k) "Minister" means Minister of National Revenue for Canada;

- (l) "non-resident" means not resident in Ontario;
- (m) "office" means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a Minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly, senator or member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director, and "officer" means a person holding such an office;
- (n) "prescribed" in the case of a form or the information to be given on a form, means prescribed by order of the Treasurer, and, in any other case, means prescribed by regulation;
- (o) "property" means property of any kind whatsoever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes a right of any kind whatsoever, a share or a chose in action;
- (p) "regulation" means a regulation made by the Lieutenant-Governor in Council under this Act;
- (q) "taxpayer" includes any individual mentioned in Part I of this Act whether or not he is liable to pay tax;
- (r) "Treasurer" means Treasurer of Ontario;
- (s) "trust" means the trustee or the executor, administrator, heir or other legal representative having ownership or control of the trust or estate property;
- (t) "tax payable by a taxpayer under Part I" means the tax payable by him as fixed by assessment or reassessment subject to variation on objection or appeal, if any, in accordance with the provisions of that Part.

Taxation
year.

(2) For the purpose of this Act, a "taxation year" is, in the case of an individual, a calendar year, and when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with or ending in that year.

Extended
meaning of
resident.

(3) For the purposes of this Act, a person shall be deemed to have been resident in Ontario in a taxation year if,

- (a) he sojourned in Ontario in the year for a period of, or periods the aggregate of which is one 183 or more;
- (b) he was, at any time in the year, a member of the naval, military or air forces of Canada, if, before his enlistment, he was ordinarily resident in Ontario; or
- (c) he was, at any time in the year,
 - (i) an ambassador, minister, high commissioner, officer or servant of Canada, or
 - (ii) an agent-general, officer or servant of Ontario,
 and he was resident in Ontario immediately prior to appointment by Canada or Ontario, as the case may be, or received representation allowances in respect of the year.

(4) In this Act, a reference to a person resident in Ontario ^{Ordinarily resident.} includes a person who was at the relevant time ordinarily resident in Ontario.

(5) "Tax payable under Part I of *The Income Tax Act* ^{Interpre-} (Canada)" and "tax payable under section 31 of *The Income* ^{tation.} *Tax Act* (Canada)" and "tax otherwise payable under Part I ^{1948, c. 52} of *The Income Tax Act* (Canada)" means "tax otherwise ^{(Can.).} payable under this Part" as the definition of such term in subsection 2 of section 32 of *The Income Tax Act* (Canada) from time to time applies. 1950, c. 29, s. 58.

PART IV

59.—(1) The provisions of *The Income Tax Act* (Ontario), ^{Where} being chapter 25 of The Revised Statutes of Ontario, 1937, ^{R.S.O. 1937, c. 25,} shall apply to the taxation year 1949 and earlier taxation ^{still to} years and the provisions of this Act shall apply thereafter. ^{apply.}

(2) Subject to subsection 1, the said *The Income Tax Act* ^{R.S.O. 1937, c. 25,} (Ontario) is repealed. 1950, c. 29, s. 59. ^{repealed, saving.}

60. This Act shall come into force on a day to be named ^{Proclama-} by the Lieutenant-Governor by his Proclamation and shall be ^{tion.} effective with respect to the income of individuals of the then current taxation year and succeeding years. 1950, c. 29, s. 60.

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CHAPTER 176

The Income Tax Agreement Act

1.—(1) The Treasurer of Ontario, representing His Majesty the King in right of Ontario, is hereby authorized to make an agreement with the Minister of Finance, representing His Majesty the King in right of Canada, under which the Minister will pay to the Treasurer upon such terms as to times and the manner of payment and otherwise as may be agreed upon, an amount equal to five per cent of the taxes paid by individuals resident, employed or carrying on business in Ontario under Part I of *The Income Tax Act* (Canada) on income of the taxation year during which the agreement is made, during the taxation year prior to the year in which the agreement is terminated and during the intervening taxation years. Rental agreement authorized. 1948, c. 52 (Can.).

(2) The taxes paid by individuals resident, employed or carrying on business in Ontario mentioned in subsection 1 shall be "taxes otherwise payable under this Part" as the definition of such term in subsection 2 of section 32 of *The Income Tax Act* (Canada) from time to time applies. 1950, c. 30, s. 1. Taxes defined.

2.—(1) As an alternative to the agreement authorized by section 1, the Treasurer of Ontario, representing His Majesty the King in right of Ontario, is hereby authorized to make an agreement with the Minister of National Revenue, representing His Majesty the King in right of Canada, under which, upon such terms as may be agreed upon, the Minister and the Deputy Minister of National Revenue may exercise in the place and stead, on behalf of, or as agent for the Treasurer and the Controller of Revenue for Ontario, such of the powers and duties conferred or imposed upon the Treasurer and the Controller under *The Income Tax Act* (Ontario) as may be specified in the agreement. Agency agreement authorized. Rev. Stat., c. 175.

(2) The Lieutenant-Governor in Council may authorize the treasurer to pay any expenses that may be incurred in carrying out the terms of the agreement authorized by subsection 1. 1950, c. 30, s. 2. Expenses.

CHAPTER 177

**The Industrial and Mining Lands
Compensation Act**

1. It shall be lawful for any owner or operator of a mine, industry or factory or works in connection therewith, or any person contemplating acquiring or operating a mine, factory, industry or works, to make an agreement with the owner or lessee of any land for payment to the owner or lessee of the land of compensation for any damage or injury resulting or likely to result to the land or to its use and enjoyment from the operation of the mine, industry, factory or works in connection therewith. R.S.O. 1937, c. 162, s. 1.

Agreement
for com-
pensation

2. The agreement shall, if so expressed therein, bind and enure to the benefit of the heirs, executors, administrators and assigns, or the successors and assigns of the parties thereto, and may relate not only to a mine, industry, factory or works in connection therewith then in operation, but may also relate to any mine, industry, factory or works in connection therewith which may thereafter be established by the party paying the compensation, within a specified area, even though the land upon which the mine, industry, factory or works in connection therewith is thereafter operated is not at the time owned or leased by the party making the compensation. R.S.O. 1937, c. 162, s. 2.

Effect and
extent of
operation of
agreement.

3. Where the land in respect of which the agreement is made is not under *The Land Titles Act*, the agreement shall be registered, and where the land is under *The Land Titles Act*, an original of the agreement, with proof of the due execution thereof, shall be lodged with the proper master of titles, who shall enter shortly the particulars thereof in the register of the title of the parcel of land on which the burden is imposed, with a note referring to this enactment, and any subsequent agreement cancelling any agreement so registered or lodged, shall in like manner be registered or lodged as the case may be. R.S.O. 1937, c. 162, s. 3.

Registra-
tion of
agreement,
Rev. Stat.,
c. 197.

4. The payment of compensation under the agreement shall afford a complete answer to any action which may be brought for damages or for an injunction in respect of any matter for which compensation has been made. R.S.O. 1937, c. 162, s. 4.

Payment of
compen-
sation to
be an
answer to
action.

CHAPTER 178

The Industrial Farms Act

1.—(1) The council of a county or of a city having a population of not less than 50,000 as shown by the last census taken under the authority of the Parliament of Canada, may pass by-laws for establishing, equipping and maintaining one or more industrial farms which in the case of a city may be established within or without the limits of the city, and for acquiring the lands necessary for that purpose. R.S.O. 1937, c. 387, s. 1 (1). City and county industrial farms.

(2) One or more industrial farms may be established anywhere in Ontario by the Lieutenant-Governor in Council. R.S.O. 1937, c. 387, s. 1 (2); 1946, c. 41, s. 1. Provincial industrial farms.

2. An industrial farm shall not be established until the site and plans for the buildings to be erected thereon have been approved by the Lieutenant-Governor in Council on the report of an officer authorized by the Lieutenant-Governor in that behalf, or an officer designated under subsection 1 of section 9 of *The Penal and Reform Institutions Inspection Act*. R.S.O. 1937, c. 387, s. 2. Site and plans must be approved. Rev. Stat., c. 273.

3.—(1) The Lieutenant-Governor in Council may order that from a day to be named in the order an industrial farm shall be the common jail within the meaning of *The Jails Act* of any counties or provisional judicial districts, or of any combination of counties and provisional judicial districts. Industrial farms may become common jails. Rev. Stat., c. 188.

(2) No such order shall be made until an officer designated under subsection 1 of section 9 of *The Penal and Reform Institutions Inspection Act* has reported that a sufficient lock-up for the safe custody of prisoners held or committed for trial or on remand in each county or district named in the order or in custody prior to the committal for trial, or pending their removal to the industrial farm, reformatory for Ontario, or penitentiary, has been provided in or near the county or district town. Condition precedent to Order in Council. Rev. Stat., c. 273.

(3) The lock-up may be the building formerly used as the common jail of the county or provisional judicial district or part thereof, or some other building approved by an officer mentioned in subsection 2, and shall be established, equipped and maintained without cost to the Province. 1946, c. 41, s. 2. Lock-up.

Joint action by two or more municipal corporations.

Rev. Stat., c. 273.

Transfer from jail to industrial farm.

Transfer of prisoners.

Appointment of superintendent, etc.

Rev. Stat., c. 273.

Agreements for extending sewerage system to industrial farm.

4. In lieu of establishing separate industrial farms the councils of two or more counties or cities may, with the approval in writing of an officer authorized by the Lieutenant-Governor in that behalf, or an officer designated under subsection 1 of section 9 of *The Penal and Reform Institutions Inspection Act*, enter into an agreement for the establishment, equipment and maintenance of, and may establish, equip and maintain an industrial farm. R.S.O. 1937, c. 387, s. 3.

5.—(1) Prisoners who are convicted of offences against any Act of the Legislature or against a municipal by-law, or who may be lawfully committed for offences against the criminal law, may be transferred on a warrant of an officer authorized by the Lieutenant-Governor in that behalf, or an officer designated under subsection 1 of section 9 of *The Penal and Reform Institutions Inspection Act*, from any common or district jail, or from any other place of legal custody, to an industrial farm.

(2) A male prisoner in an industrial farm whose sentence has not expired may be transferred to an Ontario reformatory or to the jail of the county or district in which he was sentenced, or to any other industrial farm or jail, upon the warrant of an officer mentioned in subsection 1, and any such officer may also direct the removal of any female prisoner in an industrial farm to the Andrew Mercer Reformatory for Females or to an industrial refuge for females or to the jail of the county or district in which she was sentenced. R.S.O. 1937, c. 387, s. 4.

6. The superintendents, guards, clerks, accountants, engineers and all other officers and employees of industrial farms shall be appointed by the Lieutenant-Governor in Council upon the report of an officer designated under subsection 1 of section 9 of *The Penal and Reform Institutions Inspection Act*, and shall be paid such salaries by the county or city or authority establishing and maintaining such farms as shall be prescribed from time to time by the Lieutenant-Governor in Council, provided that in any industrial farm for male prisoners established and equipped by the corporation of a city of over 100,000 persons, the corporation of the city may appoint one engineer and one steward, but if such appointments are made, the engineer and the steward shall be subject to the same discipline and the same rules and regulations as any other officer or employee of such farm. R.S.O. 1937, c. 387, s. 5.

7.—(1) The council of a county or city which has established an industrial farm or industrial farms may from time to time enter into an agreement or agreements for

connecting the industrial farm or industrial farms with the sewerage system of any municipal corporation and may pass all by-laws and do all things necessary to carry the agreement or agreements into effect.

(2) Such council of a county or city may contract with The Hydro-Electric Power Commission of Ontario or with any municipal corporation, company, firm or individual, owning or operating a waterworks system or works for the production and supply of electricity for light, heat or power, for the supply of water for domestic purposes and for fire protection, or for the supply of electricity for light, heat or power purposes at the industrial farm or industrial farms.

Contracts for supplying water, light and power.

(3) For the purpose of connecting the industrial farm or industrial farms with a sewerage or waterworks system or electrical works, the corporation of the county or city, its officers, servants, agents or workmen may enter upon and pass over any lands or highways lying between the industrial farm or industrial farms and the points of connection, and may dig up the lands and highways and construct sewers and lay down pipes and place all necessary poles, wires and appliances and do all necessary work in or upon the lands and highways, making due compensation to the owners as provided by *The Municipal Act*.

Power to carry necessary works over intervening lands.

Rev. Stat., c. 243.

(4) Where two or more such counties or cities have established a joint industrial farm or industrial farms, they shall have in respect to the industrial farm or industrial farms, all the powers conferred upon the council of a county or city by this section. R.S.O. 1937, c. 387, s. 6.

Powers of corporations establishing a joint industrial farm.

8. It shall not be necessary to obtain the assent of the electors to a by-law for raising such moneys as may be required for the establishment, equipment and maintenance of an industrial farm or for the acquiring of lands required for that purpose. R.S.O. 1937, c. 387, s. 7.

Assent of electors not required to by-law establishing industrial farm.

9. The Lieutenant-Governor in Council upon the recommendation of an officer designated under subsection 1 of section 9 of *The Penal and Reform Institutions Inspection Act*, may make rules and regulations for the management, discipline, government and control of industrial farms and prescribing the requirements to be observed in keeping the buildings, plants and machinery in repair. R.S.O. 1937, c. 387, s. 8.

Rules and regulations.

Rev. Stat., c. 273.

10. Rules and regulations made under this Act may provide for requiring every prisoner committed to an industrial farm to perform such work or services at such time, for such hours and at such trade or labour as may be deemed

Work of prisoners.

advisable, and for buying material therefor, and for selling or otherwise disposing of the articles manufactured or produced therefrom. R.S.O. 1937, c. 387, s. 9.

Employ-
ment
beyond the
precincts.

11.—(1) The Lieutenant-Governor in Council may authorize, direct or sanction the employment of any prisoner upon any specific work or duty beyond the limits of the industrial farm.

Conditions
of employ-
ment.

(2) Every such prisoner during such employment shall be subject to this Act and the regulations and the discipline of the industrial farm. 1948, c. 46, s. 1.

Cost of
maintenance
of indus-
trial farm.

12.—(1) Except where otherwise provided by agreement the cost of the maintenance of an industrial farm, as referred to in subsection 1 of section 1, including the salaries of the superintendent and the officers and employees thereof, and of the persons committed or transferred to it, and all other expenses incidental thereto, shall be borne and paid in the same manner and by the same county or city and the Province in the same proportion as if the industrial farm were a common jail under *The Administration of Justice Expenses Act*.

Rev. Stat.,
c. 5.

In case
of joint
farms.

(2) In the case of a joint industrial farm, the counties or cities by which it is established shall provide, by agreement, the proportions in which the costs and expenses mentioned in subsection 1 shall be borne by them respectively, and by which of them such costs and expenses shall be paid in the first instance, and the terms of the agreement may be varied from time to time as occasion may require, and if the corporations are unable to agree as to the variation, the same shall be determined by arbitration under *The Municipal Act*, but no such variation, except by agreement, shall be made more often than once in every five years. R.S.O. 1937, c. 387, s. 10 (1, 2).

Rev. Stat.,
c. 243.

Cost of
main-
tenance.

(3) The cost of the establishment, equipment and maintenance of an industrial farm referred to in subsection 2 of section 1 shall be borne and paid by the Province. R.S.O. 1937, c. 387, s. 10 (3); 1946, c. 41, s. 3.

Monthly
reports
by superin-
tendent.
Rev. Stat.,
c. 273.

13. The superintendent of every industrial farm shall, during the first week of each calendar month, transmit by registered post to an officer designated under subsection 1 of section 9 of *The Penal and Reform Institutions Inspection Act*, a report showing the number of prisoners admitted, discharged, paroled and deceased in the industrial farm during the preceding month, on the form prescribed by such officer, together with such other particulars as he may require. R.S.O. 1937, c. 387, s. 11.

CHAPTER 179

The Industrial Standards Act

1. In this Act,

Interpre-
tation.

(a) "association of employees" means a group of employees organized for the purpose of advancing their economic conditions and which is free from undue influence, domination, restraint or interference by employers or associations of employers;

(b) "Board" means the Industry and Labour Board appointed under *The Department of Labour Act*;

Rev. Stat.,
c. 95.

(c) "employer" includes every person who by himself or his agent or representative is directly or indirectly responsible for the payment of wages to any person who comes within the provisions of any schedule promulgated by Order in Council as hereinafter provided;

(d) "industry" includes any business, calling, trade, undertaking and work of any nature whatsoever and any branch thereof and any combination of the same which the Minister may designate;

(e) "Minister" means the Minister of Labour or such member of the Executive Council as is for the time being charged with the administration of this Act;

(f) "officer" means Industrial Standards Officer appointed under this Act; R.S.O. 1937, c. 191, s. 1, cls. (a-f).

(g) "wages" includes any form of remuneration for labour performed and without restricting the generality of the foregoing includes payment at an hourly, daily, weekly or monthly rate or on a production basis at a piece work or unit price rate. R.S.O. 1937, c. 191, s. 1, cl. (h).

2. The Lieutenant-Governor in Council may appoint one or more persons as Industrial Standards Officers whose duty it shall be to assist in carrying out the provisions of this Act and of the regulations and schedules. R.S.O. 1937, c. 191, s. 2.

Appoint-
ment of
Industrial
Standards
Officers.

3. Every officer shall have such powers and duties as may be prescribed by this Act and regulations and shall have

Powers and
duties of
officer.

authority to conduct inquiries and investigations respecting all matters coming within the scope of this Act and of the regulations and shall, for such purposes, have all the powers, rights and privileges as a commissioner appointed under *The Public Inquiries Act*. R.S.O. 1937, c. 191, s. 3.

Rev. Stat.,
c. 308.

Minister
may define
zones.

4.—(1) The Minister may from time to time designate the whole of Ontario, or any part or parts thereof, as a zone or zones for any business, calling, trade, undertaking and work of any nature whatsoever and any branch thereof and any combination of the same which he may designate or define as an industry for the purposes of this Act.

Reduction
of zone area.

(2) Any area so designated as a zone may be enlarged or reduced or divided into separate zones by the representatives of employers and employees in any conferences to be held as hereinafter provided and upon the approval of the Minister, the area as enlarged, reduced or divided, shall be deemed to be the designated zone or zones for the industry affected. R.S.O. 1937, c. 191, s. 4.

Interpro-
vincially
competitive
industries.

(3) Where the Minister designates a zone for an interprovincially competitive industry the zone shall, notwithstanding subsections 1 and 2, be the whole of Ontario and any schedule for the industry may provide for different wages and hours and days of labour for different areas within the zone. 1949, c. 44, s. 2.

Powers of
Board.

5. The Board shall have jurisdiction and authority,

- (a) to administer and enforce this Act, the schedules hereto and the regulations;
- (b) to hear appeals from the decisions of any advisory committee; R.S.O. 1937, c. 191, s. 5, cls. (a-b).
- (c) with the concurrence of the proper advisory committee and subject to approval of the Lieutenant-Governor in Council, to make an order amending any schedule; 1947, c. 49, s. 1.
- (d) to receive and collect wages due to any employee according to any schedule and disburse the same in accordance with the regulations of the Board;
- (e) to determine and designate which industries are interprovincially competitive and with respect to any such industry,
 - (i) may approve or withhold approval of a schedule with respect to the collection of revenue from

employers and employees in the industry and with respect to the exercise by the advisory committee of any powers in connection with the collection of such assessments and the disbursement of moneys collected, provided that the assessments which may be approved shall not exceed one-half of one per cent of an employee's wages and one-half of one per cent of an employer's pay-roll,

- (ii) may require the advisory committee to furnish estimates of receipts and expenses annually, and to furnish quarterly reports, certified by an auditor approved by the Board accounting for all money collected and disbursed. R.S.O. 1937, c. 191, s. 5, cls. (d), (e).

6. The Minister may, upon the petition of representatives of employers or employees in any industry within a designated zone or zones, authorize an officer to convene a conference of the employers and employees in such industry for the purpose of investigating and considering the conditions of labour and the practices prevailing in such industry and for negotiating with respect to any of the matters enumerated in subsection 1 of section 7. R.S.O. 1937, c. 191, s. 6.

Officer may
convene
conference.

7.—(1) The conference may submit to the Minister in writing a schedule of wages and hours and days of labour for the industry affected and the schedule may,

Conference
to report to
Minister.

- (a) establish the maximum number of hours comprising the regular working day and prescribe the hours of the day during which such hours of work may be performed;
- (b) establish the maximum number of hours comprising the regular working week;
- (c) establish the minimum rates of wages for the regular working periods;
- (d) establish the particular days in the week for the performance of labour in the industry;
- (e) establish the rates of wages and the periods for, and the conditions governing, overtime work;
- (f) classify the employees and employers and separately provide for each classification with respect to any of the matters which may be dealt with in the schedule;

- (g) define any term used in the schedule;
- (h) specify the particular operations which are included in the industry;
- (i) prohibit overtime work without a permit and authorize the advisory committee to issue the permits subject to the terms and conditions of the schedule;
- (j) fix minimum charge which may be paid, accepted or contracted for with respect to the labour content of any service, work, operation or art and with the approval of the Board fix the minimum charge which an employer or employee may contract for or accept for any service, work, operation or art;
- (k) authorize the advisory committee to fix a minimum rate of wages lower than the rate fixed by the schedule for any classification of employees or for any individual who performs work included in more than one classification of employees, or whose work is only partly subject to the schedule, or who is handicapped;
- (l) subject to the approval of the Board and with respect only to an interprovincially competitive industry, assess employers only or employers and employees in any such industry to provide revenue for the enforcement of the schedule, and authorize the advisory committee generally to administer and enforce the schedule, and to collect the assessments, and out of the revenue collected to engage inspectors and other personnel and to make such expenditures as are necessary for such administration and enforcement. R.S.O. 1937, c. 191, s. 7.

Minister
may revise
schedule of
wages, etc.
Rev. Stat.,
c. 337.

(2) The Minister may revise any schedule of wages and hours and days of labour submitted to him by a conference so that it may meet the requirements of *The Regulations Act* and the regulations made thereunder. 1947, c. 49, s. 2.

Formulation
of schedule
of wages,
hours, days
of labour.

8. If, in the opinion of the Minister, the schedule of wages and hours and days of labour submitted by the conference is agreed to by a proper and sufficient representation of employers and employees, he may approve thereof and upon his recommendation the Lieutenant-Governor in Council may declare the schedule to be in force during pleasure, or for the period not exceeding twelve months stipulated in the schedule, within such designated zone or zones as may be prescribed and to be binding upon the employers and employees in

the industry referred to in the schedule. R.S.O. 1937, c. 191, s. 8.

9. Every employer affected by any schedule shall cause a copy of the schedule to be posted in a conspicuous place where his employees are engaged in their duties so that the same may be readily seen and read by all employees and further shall cause the schedule to be there maintained so long as it remains in force. R.S.O. 1937, c. 191, s. 10. Posting of schedule.

10. For the purposes of this Act every person who is in any way engaged in any industry shall, in so far as he personally performs work in such industry, be deemed an employee, and in so far as he employs another person or is the proprietor of a shop or business either alone or in partnership with another person be deemed an employer, and this Act and the regulations and schedules hereto shall, *mutatis mutandis*, be read and construed accordingly, notwithstanding that such person may thereby become both an employer and an employee, or may become an employer for one purpose and an employee for another purpose, or that the status of such person may be changed from time to time. R.S.O. 1937, c. 191, s. 11. One man operators and partners within the scope of the Act.

11. Whenever a schedule is in force, the Board may require any employer affected thereby to,

- (a) furnish the name, address and age of all employees and such further information respecting wages, hours and days and conditions of labour as may be required by the regulations; Furnishing of information by employers.
- (b) produce for inspection by any person acting under the authority of this Act or any schedule hereto any books, registers, pay-rolls, financial statements, attendance records, time records, contracts of employment and such other information as may be deemed necessary and to give access to the employer's premises at all reasonable times to such person for the purpose of obtaining such information. R.S.O. 1937, c. 191, s. 12. Production of records by employers.

12. The Lieutenant-Governor in Council may make such regulations as he may deem necessary for carrying out the provisions of this Act and for the efficient administration thereof. 1946, c. 89, s. 23 (3). Regulations.

13.—(1) For every zone or group of zones to which any schedule applies the Minister may establish an advisory Advisory Committee.

committee of not more than five members, one of whom shall be designated as chairman, and the committee may hear complaints of employers and employees to whom such schedule applies and may generally assist in carrying out the provisions of this Act and the regulations and shall have jurisdiction and authority to do anything which it is authorized to do by such schedule and for the purpose of collecting any money which it is authorized to collect or paying any money which it is authorized to pay shall be deemed a corporation.

**Right of
Appeal.**

(2) Any employer or employee aggrieved by the decision of an advisory committee shall have the right to appeal from the decision to the Board which shall have jurisdiction to hear and determine the appeal and whose decision shall be final. R.S.O. 1937, c. 191, s. 14.

**Violation of
schedule by
employer.**

14.—(1) Every employer who contravenes the provisions of any schedule applicable to him shall be guilty of an offence and on summary conviction for a first offence shall be liable to a fine of not less than \$25 and not more than \$100, and in default of payment to imprisonment for a term of not more than two months, and for a second and any subsequent offence shall be liable to a fine of not less than \$50 and not more than \$500, and in default of payment to imprisonment for a term of not more than six months, and if convicted for failing to pay the minimum rate of wages prescribed by any schedule applicable to him shall be ordered to pay to the Board as an additional penalty the full amount of the wages then found to be unpaid to any employee under the schedule. R.S.O. 1937, c. 191, s. 15 (1); 1939, c. 21, s. 1.

**Violation of
schedule by
employee.**

(2) Every employee who contravenes the provisions of any schedule applicable to him shall be guilty of an offence and on summary conviction shall be liable to a fine of not less than \$5 and not more than \$25 and in default of payment to imprisonment for a term of not more than ten days.

**Prosecutions
instituted.**

(3) No prosecution shall be instituted under this Act except with the consent of the Board and the production of any writing signed by a member of the Board shall be sufficient evidence of the consent of the Board. R.S.O. 1937, c. 191, s. 15 (2, 3).

**Violation of
Act to be
offence.**

15. Every person who violates any of the provisions of this Act or the regulations shall be guilty of an offence and on summary conviction, where no penalty has been specifically provided, shall be liable to a fine of not less than \$1 and not more than \$100 and in default of payment to imprisonment for a term of not more than thirty days. R.S.O. 1937, c. 191, s. 16,

16.—(1) The provisions of *The Factory, Shop and Office Building Act, The Master and Servant Act, The Minimum Wage Act, The Public and other Works Wages Act, The Wages Act* and *The Woodmen's Employment Act*, shall be read and construed subject to this Act, but in no case shall the wages prescribed by any schedule to this Act be for a less amount nor shall the hours of labour prescribed by any schedule to this Act be for a greater number of hours in each day or days in each week than is prescribed by any of such Acts. R.S.O. 1937, c. 191, s. 17 (1); 1949, c. 44, s. 3.

Application
of other
Acts.
Rev. Stat.,
cc. 126, 224,
235, 313,
415, 428.

(2) The wage rates prescribed by any schedule shall not be for lesser amounts nor shall the number of hours of labour in each day or the number of days of labour in each week be greater than is provided in *The Hours of Work and Vacations with Pay Act, The Minimum Wage Act* or *The Factory, Shop and Office Building Act* and the regulations thereunder. 1947, c. 49, s. 3.

Rates of
wages.
Rev. Stat.,
cc. 173, 235,
126.

(3) The wage rates for apprentices to whom *The Apprenticeship Act* applies shall be the rates provided under that Act and the regulations thereunder. R.S.O. 1937, c. 191, s. 17 (3).

Wages of
apprentices.
Rev. Stat.,
c. 19.

17. Any schedule made pursuant to this Act shall not be applicable to the mining industry nor to the agricultural industry nor to any other business, calling, trade, undertaking or work exempted by the regulations. 1939, c. 21, s. 2.

Where Act
not to apply.

18.—(1) In this section, "retail gasoline service industry" means the business of operating retail gasoline service stations, gasoline pumps or outlets where gasoline is offered for sale at retail, including washing, waxing, oiling or lubricating automotive vehicles, repairing or changing tires and other services and undertakings incidental thereto, but does not include a gasoline outlet on the premises of an employer and used in the fueling of automotive vehicles owned or operated by the employer.

Interpre-
tation.

(2) Notwithstanding anything in this Act, no schedule applicable to the retail gasoline service industry shall prescribe the hours of the day during which the hours of work may be performed or shall establish the particular days of the week for the performance of labour in the industry. 1948, c. 47, s. 1.

Exception
as to retail
gasoline
service
industry.

CHAPTER 180

The Infants Act

1.—(1) The Supreme Court or the surrogate court of the county or district in which the infant resides, upon the application of the father or of the mother of an infant, who may apply without a next friend, may make such order as the court sees fit regarding the custody of the infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent, or, after the death of either parent, of any guardian appointed under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise, as the court may deem just. R.S.O. 1937, c. 215, s. 1 (1).

Orders as to custody of and right of access to infant, at the instance of father or mother.

(2) Where,

Removal of proceedings to Supreme Court.

- (a) custody proceedings have been commenced in a surrogate court under subsection 1; and
- (b) it is made to appear to a judge of the Supreme Court that proceedings in respect of custody of children, alimony, dissolution of marriage or annulment of marriage are pending between the father and mother in the Supreme Court,

the judge of the Supreme Court may order that the custody proceedings in the surrogate court be removed to the Supreme Court, and may make such order as to the hearing of the application for custody and as to costs as he may deem proper. 1947, c. 50, s. 1.

(3) The court may also make an order for the maintenance of the infant by payment by the father, or out of any estate to which the infant is entitled, of such sum from time to time as, according to the pecuniary circumstances of the father or the value of the estate, the court deems reasonable.

Order as to maintenance.

(4) Where it is made to appear to the judge of the surrogate court of the county or district in which the infant resides in whose favour an order has been made under subsection 3, that default has been made in payment of any sum of money so ordered to be paid, the judge of the surrogate court,

Enforcement of order.

- (a) may from time to time summon the person in default to explain the default; and
- (b) may, where service of the summons has been proved, and the person in default does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served, issue an order for the arrest of such person; and
- (c) may, when an order has been issued, or where the person in default fails to satisfy the judge that such default is due to inability to pay, order and adjudge such person to be imprisoned for a term not exceeding three months unless the sums of money payable under the order are sooner paid. R.S.O. 1937, c. 215, s. 1 (2, 3).

Father and mother to be joint guardians.

2.—(1) Unless otherwise ordered by the court, and subject to this Act, the father and mother of an infant shall be joint guardians and shall be equally entitled to the custody, control and education of the infant.

Agreement as to custody, etc.

(2) Where the parents are not living together or where the parents are divorced or judicially separated, they may enter into a written agreement as to which parent shall have the custody, control and education of the infant, and in the event of the parents failing to agree either parent may apply to the court for its decision. R.S.O. 1937, c. 215, s. 2.

Rules of equity.

3. In questions relating to the custody and education of infants the rules of equity shall prevail. R.S.O. 1937, c. 215, s. 3.

When sale or lease of infant's estate may be authorized.

4.—(1) Where an infant is seised, possessed of or entitled to any real estate in fee or for a term of years, or otherwise, and the Supreme Court is of opinion that a sale, mortgage, lease or other disposition of the same, or of a part thereof, or of any timber, not being ornamental, growing thereon, is necessary or proper for the maintenance or education of the infant, or that for any cause his interest requires or will be substantially promoted by the disposition, the court may order the sale, mortgage, or the letting for a term of years, or other disposition of the real estate, or any part thereof, to be made under the direction of the court or of one of its officers, or by the guardian of the infant, or by a person appointed for the purpose, in such manner and with such restrictions as may be deemed expedient, and may order the infant to convey the estate,

(2) No sale, mortgage, lease or other disposition shall be made contrary to the provisions of a will or conveyance by which the estate has been devised or granted to the infant or for his use. Exception.

(3) The court, if it is of opinion that such course is for the benefit of the infant or that his interest requires it or will be substantially promoted thereby, may from time to time authorize the exchange of any lands held in fee or for a term of years or otherwise by the infant, and which are unproductive, for lands which are productive, but no such exchange of lands shall be made contrary to the provisions of a will or conveyance. Authorizing exchange of unproductive for productive property.

(4) Every exchange of lands made pursuant to subsection 3 shall be conducted and confirmed in such manner as is required by the rules and practice of the Supreme Court in the case of the sale or other disposition of the lands of infants. R.S.O. 1937, c. 215, s. 4. Procedure.

5. The Supreme Court may sanction the surrender of any lease to which an infant is entitled and if deemed expedient the acceptance of a new lease in lieu thereof. R.S.O. 1937, c. 215, s. 5. Surrender of lease.

6. Where an infant is entitled to lands subject to a lease containing a covenant for renewal the Supreme Court may sanction the execution of a new lease in accordance with the provisions of the covenant or with such modification as may be deemed expedient. R.S.O. 1937, c. 215, s. 6. Renewal of lease.

7. Every surrender and lease made or accepted by virtue of this Act shall be deemed to be as valid and effectual as if the person by whom or in whose place the same was made or accepted had been of full age and had made or accepted the same. R.S.O. 1937, c. 215, s. 7. Validity of dispositions. Imp. Act, 11 Geo. IV. and 1 Wm. IV. c. 65, s. 31.

8. Where it is deemed convenient the court may direct some other person to execute any conveyance, mortgage, lease or other document in the place of the infant and every such conveyance, mortgage, lease or other document whether executed by the infant or by such other person, shall be as effectual as if the infant had executed the same, and had been of the age of twenty-one years at the time. R.S.O. 1937, c. 215, s. 8. Conveyance by a substitute.

9. Where an infant is seised of the reversion of land subject to a lease, and the lease contains a covenant not to assign or sublet without leave, the Supreme Court may, on behalf Consent to assignment of lease by infant.

of the infant, consent to any assignment or transfer of the leasehold interest in the same manner and with the like effect as if the consent were given by a lessor under no such disability. R.S.O. 1937, c. 215, s. 9.

Compensation to owners of particular estates.

10. If any real estate of an infant is subject to dower, and the person entitled to dower consents in writing to accept in lieu of dower a gross sum which the court deems reasonable, or the permanent investment of a reasonable sum in such manner that the interest thereof be made payable to the person entitled to dower during her life, the court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower, as upon the principles applicable to life annuities may be deemed a reasonable satisfaction for such dower; or may direct the payment to the person entitled to dower of an annual sum or of the income or interest to be derived from the purchase money, or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money, or any part thereof, as may be necessary. R.S.O. 1937, c. 215, s. 10.

Order for maintenance where power of appointment in favour of children.

11. Where, by a will or other instrument, property is given beneficially to any person for his life with a power of devising or appointing the same by will in favour of his children, or of one or more of them, the Supreme Court may, on the application, or with the consent of the tenant for life, order that such portion of the proceeds of the property, as it may deem proper, shall be applied towards the maintenance or education of any infant child in whose favour the power might be exercised, notwithstanding that there is a gift over in the event of there being no children to take under the power, or that there is a right conferred upon the tenant for life, or upon some other person in such event to make a disposition of the property in favour of some person other than such children. R.S.O. 1937, c. 215, s. 11.

Order for application of dividends of stock for maintenance of infants.

Imp. Act, 11 Geo. IV and 1 Wm. IV, c. 65, s. 32.

12.—(1) The Supreme Court may order and direct the sale of any personal property of an infant including any stock or bonds to which he is entitled and may direct any money belonging to an infant and all or any part of the dividends in respect of the stock or bonds to be paid for the maintenance and education or otherwise for the benefit of the infant, and payment in accordance with the order of the court shall operate as full release and discharge from all liability with respect to the money paid, and any transfer of any stock or bonds so sold shall be made in such manner as the court may direct.

(2) The order shall be a full and complete indemnity and discharge to all banks, companies and societies and their officers and servants for all acts and things done or permitted to be done pursuant thereto. R.S.O. 1937, c. 215, s. 12.

Indemnity to banks, etc.
Imp. Act. 11 Geo. IV and 1 Wm. IV, c. 65, s. 44.

13.—(1) Every infant upon or in contemplation of his marriage, with the sanction of the Supreme Court, may make a valid and binding settlement or contract for a settlement of all or any part of his property, or property over which he has a power of appointment, whether real or personal and whether in possession, reversion, remainder or expectancy, and every conveyance, appointment and assignment of such property, or contract to make a conveyance, appointment or assignment thereof, executed by the infant with the approbation of the court for the purpose of giving effect to the settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

Power of infant with the approbation of the court to make valid marriage settlement.
Imp. Act. 18 and 19, Vict., c. 43, s. 1.

(2) This section shall not extend to a power which it is expressly declared shall not be exercised by an infant.

Exception.

(3) The court may also require that any person interested or appearing to be interested in the property shall be served with notice of the application. R.S.O. 1937, c. 215, s. 13.

Notice to persons interested.
Imp. Act. 18 and 19, Vict., c. 43, s. 3.

14. Where an appointment, under a power of appointment, or a disentailing assurance has been executed by an infant tenant in tail, under section 13, and the infant afterwards dies under age the appointment or disentailing assurance shall thereupon become absolutely void. R.S.O. 1937, c. 215, s. 14.

If infant dies under age, appointment or disentailing deed to be void.
Imp. Act. 18 and 19, Vict., c. 43, s. 2.

15. Nothing in sections 13 and 14 shall apply to a male infant under the age of twenty years or to a female infant under the age of seventeen years. R.S.O. 1937, c. 215, s. 15.

Case of males under 20 or females under 17.
Imp. Act. 18 and 19, Vict. c. 43, s. 4.

16.—(1) The surrogate court of the county or district in which the infant resides may appoint the father or mother of the infant, or may, with the consent of the father and the mother or of the surviving parent, appoint some other suitable person or persons to be the guardian or guardians of the infant, but if the infant is of the age of fourteen years no such appointment shall be made without his consent.

Appointment of guardians by surrogate court.

(2) If the infant has no parent living or any guardian authorized by law to take the care of his person and the charge of his estate, if any, or if he is of the age of fourteen years and does not give the consent mentioned in subsection 1, upon the written application of the infant, or of any friend

Where no father or authorized guardian or infant does not consent.

of the infant residing within the jurisdiction of the surrogate court to which the application is made, and after proof of twenty days public notice of the application in some newspaper published within the county or district to the surrogate court to which the application is made, the court may appoint some suitable and discreet person or persons to be guardian or guardians of the infant, whether the infant is or is not entitled to any property.

Letters of guardianship to have effect throughout Ontario.

(3) Letters of guardianship granted by a surrogate court shall have force and effect in all parts of Ontario, and an official certificate of the grant may be obtained as in the case of letters of administration. R.S.O. 1937, c. 215, s. 16.

Security by the guardian

Rev. Stat., cc. 162, 59.

17. Subject to *The Guarantee Companies Securities Act* and *The Companies Act* the court shall take from every guardian, appointed under section 16, a bond in the name of the infant, in such penal sum and with such sureties as the judge approves, conditioned that the guardian will faithfully perform his trust, and that he, or his executors or administrators will, when the infant becomes of the full age of twenty-one years, or whenever the guardianship is determined, or sooner if thereto required by law, render a true and just account of all goods, money, interest, rents, profits or other estate of the infant, which shall have come into the hands of the guardian, and will thereupon without delay deliver and pay over to the infant, or to his executors or administrators, the estate or the sum which may be in the hands of the guardian belonging to the infant, deducting therefrom and retaining a reasonable sum for the expenses and charges of the guardian, and the bond shall be recorded by the registrar of the court in the books of his office. R.S.O. 1937, c. 215, s. 17.

(NOTE.—*As to appointment of trust company as guardian, see The Loan and Trust Corporations Act, Rev. Stat., c. 214.*)

Removal of guardians.

18.—(1) Testamentary guardians and guardians appointed or constituted by virtue of this Act shall be removable by the Supreme Court, or by the surrogate court for the same causes for which trustees are removable.

Resignation of office by guardian.

(2) Any such guardian may, by leave of the court, resign his office upon such terms and conditions as may be deemed just. R.S.O. 1937, c. 215, s. 18.

Returns respecting guardians to surrogate court.

Rev. Stat., c. 380.

19. A return of every appointment and removal or resignation of a guardian shall be made by the registrar of the court to the surrogate clerk in like manner as is required by *The Surrogate Courts Act* in the case of grants of probate or administration. R.S.O. 1937, c. 215, s. 19.

20. Unless where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited the guardian so appointed or constituted during the continuance of his guardianship, Guardian's authority.

- (a) shall have authority to act for and on behalf of the infant; and
- (b) shall have the charge and management of his estate, real and personal, and the custody of his person and the care of his education. R.S.O. 1937, c. 215, s. 20.

21. An appeal shall lie from an order or judgment of a surrogate court under this Act to the Court of Appeal. R.S.O. 1937, c. 215, s. 21. Appeal from order or judgment of surrogate court.

22. The practice and procedure under *The Surrogate Courts Act* and rules shall apply to proceedings in the surrogate court under this Act, and the power to make rules under that Act shall apply to proceedings under this Act. R.S.O. 1937, c. 215, s. 22. Practice and procedure. Rev. Stat., c. 380.

23. Nothing in this Act shall deprive the Supreme Court of jurisdiction in matters provided for by this Act. R.S.O. 1937, c. 215, s. 23. Jurisdiction of Supreme Court not affected.

24. Nothing in this Act shall change the law as to the authority of the father in respect of the religious faith in which his child is to be educated. R.S.O. 1937, c. 215, s. 24. Religious education of infant.

CHAPTER 181

The Injured Animals Act .

1. Where a constable, or the inspector of an incorporated humane society or society for the prevention of cruelty to animals, finds any horse so severely injured that it would, in his opinion, be cruel to allow the horse to live, he shall, if the owner refuses to consent to the destruction of the animal, or is absent, at once summon a veterinary surgeon, if any such surgeon resides or can be found within a reasonable distance, or, if no such surgeon can be obtained, then two reputable citizens, and if it appears by the certificate of the surgeon or by a statement signed by the two citizens that the animal is, or appears to be, incapable of being so cured or healed as to live thereafter without suffering, it shall be lawful for the constable or inspector, without the consent of the owner, to kill or cause to be killed the animal with such instrument or instruments or appliances, and with such precautions and in such a manner as to inflict as little pain and suffering as possible. R.S.O. 1937, c. 338, s. 1.

Duty of Constable or inspector where horse is found severely injured.

Imp. Act, 57-58 Vict, c. 22.

2. If any horse is abandoned, or left to die in any street, road, commons or public place, it shall be the duty of any constable or inspector, as mentioned in section 1, to make a reasonable attempt to ascertain the owner of the animal, and, if the owner cannot be found, or, if found, refuses to give his consent to the killing of the horse, the constable or inspector shall proceed in the manner set forth in section 1. R.S.O. 1937, c. 338, s. 2.

Where horse is abandoned.

3. Where any large animal, such as a horse, cow, sheep or hog, is severely injured by any railway engine or train, the conductor of the train shall report the occurrence to the nearest station agent of the railway, who shall forthwith notify the owner if possible and the nearest constable, who shall proceed as provided by section 1. R.S.O. 1937, c. 338, s. 3.

Animals injured by railway trains.

CHAPTER 182

The Innkeepers Act

1. In this Act,

Interpre-
tation.

(a) "inn" includes an hotel, inn, tavern, public house or other place of refreshment, the keeper of which is by law responsible for the goods and property of his guests;

(b) "innkeeper" means the keeper of any such place.
R.S.O. 1937, c. 241, s. 1.

2.—(1) Every innkeeper, boarding-house keeper and lodging-house keeper shall have a lien on the baggage and property of his guest, boarder or lodger for the value or price of any food or accommodation furnished to him or on his account.

Lien on bag-
gage, etc.,
for accom-
modation,
etc., fur-
nished.

(2) In addition to all other remedies provided by law he shall have the right, in case the same remains unpaid for three months, to sell by public auction the baggage and property of the guest, boarder or lodger, on giving one week's notice of the intended sale by advertisement in a newspaper published in the municipality in which the inn, boarding-house, or lodging-house is situate, or in case there is no newspaper published in the municipality, in a newspaper published nearest to the inn, boarding-house, or lodging-house.

Power
to sell.

(3) The advertisement shall state the name of the guest, boarder or lodger, the amount of his indebtedness, the time and place of sale, and the name of the auctioneer, and shall give a description of the baggage or other property to be sold.

Particulars
in notice.

(4) The innkeeper, boarding-house keeper, or lodging-house keeper may apply the proceeds of the sale in payment of the amount due to him, and the costs of the advertising and sale, and shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor.

Proceeds of
sale, applica-
tion of.

(5) Every keeper of a livery stable or a boarding stable shall have a lien on every horse or other animal boarded at or carriage left in such livery stable or boarding stable for his reasonable charges for boarding and caring for the horse, animal or carriage,

Lien on
horses and
carriages.

Lien on
horses, etc.,
and power
to sell.

(6) Where an innkeeper, boarding-house keeper, lodging-house keeper, livery stable keeper or boarding stable keeper has a lien upon a horse, other animal or carriage for the value or price of any food or accommodation supplied, or for care or labour bestowed thereon, he shall, in addition to all other remedies provided by law, have the right, in case the same remains unpaid for two weeks, to sell by public auction the horse, animal or carriage on giving two weeks notice of the intended sale by advertisement in a newspaper published in the municipality in which the inn, boarding-house, lodging-house, livery stable or boarding stable is situate, or, in case there is no newspaper published in the municipality, in a newspaper published nearest to the inn, boarding-house, lodging-house, livery stable or boarding stable.

Advertise-
ment of
intended
sale.

(7) The advertisement shall state the name, if known, of the person or persons who brought the horse, animal or carriage to the inn, boarding-house, lodging-house, livery stable or boarding stable, the amount of the indebtedness, and the name of the auctioneer, and shall give a description of the horse, animal or carriage.

Proceeds of
sale, appli-
cation of.

(8) The innkeeper, boarding-house keeper, lodging-house keeper, livery stable keeper or boarding stable keeper may apply the proceeds of the sale in payment of the amount due to him, and the costs of the advertisement and sale, and shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor. R.S.O. 1937, c. 241, s. 2.

Limitation of
innkeeper's
liability.

3.—(1) No innkeeper shall be liable to make good to any guest of the innkeeper any loss of or injury to goods or property brought to his inn, not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than the sum of \$40 except,

except where
default or
neglect;

(a) where the goods or property have been stolen, lost, or injured through the wilful act, default, or neglect of the innkeeper or any servant in his employ;

or unless de-
posited with
him for safe
keeping.

(b) where the goods or property have been deposited expressly for safe custody with the innkeeper.

Conditions
of liability.

(2) In case of such deposit it shall be lawful for the innkeeper, if he thinks fit, to require, as a condition of his liability, that the goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same. R.S.O. 1937, c. 241, s. 3,

4. If an innkeeper refuses to receive for safe custody, as mentioned in clause *b* of subsection 1 of section 3 any goods or property of his guest, or if the guest, through any default of the innkeeper, is unable to deposit such goods or property the innkeeper shall not be entitled to the benefit of this Act in respect thereof. R.S.O. 1937, c. 241, s. 4.

Consequences of failure to take charge of goods.

5. Every innkeeper shall cause to be kept conspicuously posted up in the office and public rooms and in every bedroom in his inn a copy of section 3 printed in plain type, and he shall be entitled to the benefit thereof in respect of such goods or property only as are brought to his inn while such copy is so posted up. R.S.O. 1937, c. 241, s. 5.

Copy of section 3 to be conspicuously exhibited.

6.—(1) Subject to subsection 5 where the claim under the lien of any innkeeper, lodging-house keeper or boarding-house keeper upon the goods of his guest exceeds the amount due in respect of one week's board or lodging, the guest may on payment or tender of that amount, obtain possession of the goods at any time before sale thereof whatever may be the amount due by the guest, unless a magistrate upon application to him shall otherwise order.

Limitation upon lien of innkeeper, etc.

(2) In case of any retention or seizure by any innkeeper, lodging-house keeper or boarding-house keeper, the guest or owner of the goods seized may apply to a magistrate who may in a summary manner make such order as to the custody of the goods as may seem fair to him under the circumstances of the case notwithstanding the lien created by this Act or otherwise.

Jurisdiction of magistrate.

(3) In case of a contravention of this section complaint may be laid before a magistrate who shall deal with the matter under *The Summary Convictions Act* and in case of disobedience to any order made, may punish the offending party by fine not exceeding \$50 or by imprisonment not exceeding thirty days, or both.

Penalties. Rev. Stat., c. 379.

(4) Notwithstanding anything in this Act a magistrate acting under subsections 1 to 3 shall exercise his absolute discretion as to the disposal of any matter coming before him under such subsections.

Discretion of magistrate.

(5) Where possession of the goods of a guest is claimed by an innkeeper under his lien thereon, the guest or the owner of the goods shall only be entitled to obtain possession thereof under subsection 1 by an order of a magistrate upon application made by the guest or owner for such order and after notice of the application has been given in writing to the innkeeper in accordance with the directions of the magistrate. R.S.O. 1937, c. 241, s. 6.

Application for recovery where goods held by innkeeper.

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CHAPTER 183

The Insurance Act

INTERPRETATION

1. In this Act, except where inconsistent with the inter-^{Interpre-}pretation sections of any Part, tation.

1. "accident insurance" means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause; R.S.O. 1937, c. 256, s. 1, par. 1.

2. "adjuster" means a person who,

(a) on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guaranty bond issued by an insurer, or investigates, adjusts or settles any such loss or claim; or

(b) holds himself out as an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims,

but does not include,

(c) a barrister or solicitor acting in the usual course of his profession;

(d) a trustee or agent of the property insured;

(e) a salaried employee of a licensed insurer while acting on behalf of such insurer in the adjustment of losses;

(f) a person who is employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence; or

(g) a person who acts as an adjuster of marine losses only; 1947, c. 51, s. 1.

3. "agent" means a person who, for compensation, not being a duly licensed insurance broker or not being a person acting under the authority of subsection 16, 17, 18 or 19 of section 290, solicits insurance on behalf of any insurer or transmits, for a person other than himself, an application for or a policy of insurance to or from such insurer or offers or assumes to act in the negotiation of such insurance or in negotiating its continuance or renewal;
4. "aircraft insurance" means insurance against loss of or damage to an aircraft and against liability for loss or damage to persons or property caused by an aircraft or by the operation thereof;
5. "appeal" includes a judicial revision or review of a judgment, decision, order, direction, determination, finding or conviction, and a case stated or reserved, and a removal of proceedings by way of *certiorari* or otherwise;
6. "automobile" includes all self-propelled vehicles, their trailers, accessories and equipment, but not railway rolling stock, watercraft or aircraft of any kind;
7. "automobile insurance" means insurance against liability for loss or damage to persons or property caused by an automobile or the use or operation thereof, and against loss of or damage to an automobile;
8. "beneficiary" means a person designated or appointed as one to whom or for whose benefit insurance money is to be payable;
9. "boiler and machinery insurance" means insurance against loss or damage to property and against liability for loss or damage to persons or property through the explosion, collapse, rupture or breakdown of, or accident to, boilers or machinery of any kind;
10. "broker" means a person who, for compensation, not being a licensed agent or not being a person acting under the authority of subsection 16, 17, 18 or 19 of section 290, acts or aids in any manner in negotiating contracts of insurance or placing risks or effecting insurance or in negotiating the continuance or renewal of such contracts for a person other than himself;

11. "cash-mutual corporation" means a corporation without share capital or with guarantee capital stock subject to repayment by the corporation, in respect of which the dividend rate is limited by its Act or instrument of incorporation, which is empowered to undertake insurance on both the cash plan and the mutual plan;
12. "chief agency" means the principal office or place of business in Ontario of any licensed insurer having its head office out of Ontario;
13. "contract" means a contract of insurance and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
14. "credit insurance" means insurance against loss to the insured through the insolvency or default of a person to whom credit is given in respect of goods, wares or merchandise;
15. "Department" means Department of Insurance of Ontario;
16. "disability insurance" means insurance undertaken by an insurer as part of a life insurance contract whereby the terms of the policy provide for the duration of such insurance for more than one year and for the payment of insurance money or the granting of benefits in the event that the insured becomes disabled as a result of bodily injury or disease;
17. "double indemnity insurance" means insurance undertaken by an insurer as part of a life insurance contract whereby the terms of the policy provide for the duration of such insurance for more than one year and for payment only in the event of the death of the insured by accident of an additional amount of insurance money not exceeding the amount payable in the event of death from other causes;
18. "due application" includes such information, evidence and material as the Superintendent requires to be furnished, and also the payment of the fees hereinafter prescribed in respect of any application, certificate or document required or issued by virtue of this Act;
19. "employers' liability insurance" means insurance (not being insurance incidental to some other class

of insurance defined by or under this Act) against loss to an employer through liability for accidental injury to or death of an employee arising out of or in the course of his employment, but does not include workmen's compensation insurance;

20. "endowment insurance" as applied to a fraternal society means an undertaking to pay an ascertained or ascertainable sum at a fixed future date, if the person whose life is insured is then alive, or at his death, if he dies before such date;
21. "exchange" or "reciprocal or inter-insurance exchange" means a group of subscribers exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney;
22. "foreign jurisdiction" includes any jurisdiction other than Ontario;
23. "fire insurance" means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to property through fire, lightning or explosion due to ignition; R.S.O. 1937, c. 256, s. 1, pars. 3-23.
24. "fraternal society" means a society, order or association incorporated for the purpose of making with its members only and not for profit, contracts of life, accident or sickness insurance under which benefits may be paid only to its members or their beneficiaries, in accordance with its constitution and laws and the provisions of this Act; R.S.O. 1937, c. 256, s. 1, par. 24; 1949, c. 45, s. 1.
25. "governing executive authority" means the executive committee, executive board, management committee, grand executive committee or such other board, committee or body as is charged under the constitution and rules of a fraternal society with its general management between general meetings;
26. "guarantee insurance" means the undertaking to perform an agreement or contract or to discharge a trust, duty or obligation upon default of the person liable for such performance or discharge or to pay money upon such default or in lieu of such performance or discharge, or where there is loss or damage through such default and includes insurance against loss or liability for loss due to the invalidity of the

title to any property or of any instrument or to any defect in such title or instrument, but does not include credit insurance;

27. "hail insurance" means insurance against loss of or damage to growing crops caused by hail;
28. "head office" means the place where the chief executive officer of an insurer transacts his business;
29. "industrial contract" means a contract of life insurance for an amount not exceeding \$2,000, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, and which provides for payment of premiums at fortnightly or shorter intervals, or, if the premiums are usually collected at the home of the insured, at monthly intervals;
30. "inland transportation insurance" means insurance (other than marine insurance) against loss of or damage to property,
 - (a) while in transit or during delay incidental to transit; or
 - (b) where, in the opinion of the Superintendent, the risk is substantially a transit risk;
31. "insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event;
32. "insurance fund" or "insurance funds", as applied to a fraternal society or as applied to any corporation not incorporated exclusively for the transaction of insurance, includes all money, securities for money and assets appropriated by the rules of the society or corporation to the payment of insurance liabilities or appropriated for the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union appropriated to or applicable for the voluntary assistance of wage earners unemployed or upon strike;
33. "insurance money" means the amount payable by an insurer under a contract, and includes all benefits,

surplus, profits, dividends, bonuses, and annuities payable under the contract;

34. "insurance on the cash plan" means and includes any insurance which is not mutual insurance;
35. "insurer" means the person who undertakes or agrees or offers to undertake a contract;
36. "life insurance" means insurance whereby the insurer undertakes to pay insurance money on death, or on the happening of any contingency dependent on human life, or whereby the insurer undertakes to pay insurance money subject to the payment of premiums for a term depending on human life, but, except to the extent of double indemnity insurance, does not include insurance payable in the event of death by accident only;
37. "live stock insurance" means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss through the death or sickness of or accident to an animal;
38. "lodge" includes a primary subordinate division by whatever name known, of a fraternal society;
39. "marine insurance" means insurance against marine losses; that is to say, the losses incident to marine adventure, and may by the express terms of a contract or by usage of trade extend so as to protect the insured against losses on inland waters or by land or air which are incidental to any sea voyage;
40. "Minister" means that member of the Executive Council charged for the time being by the Lieutenant-Governor in Council with the administration of this Act;
41. "mutual benefit society" means a mutual corporation formed for the purpose of providing sick and funeral benefits for its members, or for this and any other purposes necessary or incidental thereto except life insurance, but does not include a pension fund or employees' mutual benefit society incorporated under or subject to *The Companies Act*;
42. "mutual corporation" means a corporation without share capital or with guarantee capital stock subject to repayment by the corporation, in respect of which

the dividend rate is limited by its Act or instrument of incorporation, which is empowered to undertake mutual insurance exclusively;

43. "mutual insurance" means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts whether or not the maximum amount of such consideration is predetermined;
44. "officer" includes any trustee, director, manager, treasurer, secretary or member of the board or committee of management of an insurer or any person appointed by the insurer to sue and be sued in its behalf;
45. "paid in" when applied to the capital stock of an insurer or to any shares thereof, means the amount paid to the insurer on its shares, not including the premium, if any, paid thereon, whether such shares are or are not fully paid;
46. "paid up" when applied to the capital stock of an insurer or to any shares thereof, means capital stock or shares on which there remains no liability, actual or contingent, to the issuing insurer;
47. "pension fund association" means a company, corporation or association incorporated prior to the year 1910, under or by virtue of any law of the Province of Quebec, for the purpose of providing a pension for those persons who have contributed to a fund therefor during a certain number of years, and includes any auxiliary funds incorporated for the purpose of guaranteeing the repayment of any sum to those who contributed to such pension fund during a certain number of years, or for the purpose of assuring a life pension to those contributing a sum of money to such pension fund, or for these and similar purposes;
48. "plate glass insurance" means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to plate, sheet or window glass, whether in place or in transit;
49. "policy" means the instrument evidencing a contract;

50. "premium" means the single or periodical payment under a contract for the insurance, and includes dues, assessments, and other considerations;
51. "premium note" means an instrument given as consideration for insurance whereby the maker undertakes to pay such sum or sums as may be legally demanded by the insurer, but the aggregate of which sums does not exceed an amount specified in the instrument;
52. "property" includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges and in respect of inability to occupy the insured premises, but only to the extent of express provision in the contract;
53. "property damage insurance" means insurance against loss of or damage to property which is not included in or incidental to some other class of insurance defined by or under this Act;
54. "public liability insurance" means insurance against loss or damage to the person or property of others which is not included in or incidental to some other class of insurance defined by or under this Act;
55. "regulations" means regulations made under this Act;
56. "sick and funeral benefits" includes insurance against sickness, disability or death under which the moneys payable upon the happening of sickness, disability or death do not exceed the limits prescribed by section 269;
57. "sickness insurance" means insurance by which the insurer undertakes to pay insurance money in the event of sickness of the person or persons insured, but does not include disability insurance;
58. "sprinkler leakage insurance" means insurance against loss of or damage to property through the breakage or leakage of sprinkler equipment or other fire protection system, or of pumps, water pipes or plumbing and its fixtures;
59. "Superintendent" means the Superintendent of Insurance and includes the Deputy Superintendent of Insurance;

60. "theft insurance" means insurance against loss or damage through theft, wrongful conversion, burglary, house-breaking, robbery or forgery;
61. "upon proof" as applied to any matter connected with the licensing of an insurer or other person means upon proof to the satisfaction of the Superintendent;
62. "weather insurance" means insurance against loss or damage through windstorm, cyclone, tornado, rain, hail, flood or frost, but does not include hail insurance;
63. "workmen's compensation insurance" means insurance of an employer against the cost of compensation prescribed by statute for bodily injury, disability or death of a workman through accident or disease arising out of or in the course of his employment. R.S.O. 1937, c. 256, s. 1, pars. 25-63.

PART I

SUPERINTENDENT AND HIS DUTIES

2. There shall continue to be a Department of Insurance and the same shall be presided over by the Minister. R.S.O. 1937, c. 256, s. 2. The Department of Insurance.

3.—(1) There shall continue to be a Superintendent of Insurance who shall be appointed by the Lieutenant-Governor in Council and be the deputy head of the Department. Appointment of Superintendent.

(2) The Superintendent shall have general supervision of the business of insurance within Ontario and he shall see that the laws, relating to the conduct thereof, are enforced and obeyed, and shall examine and report to the Minister from time to time upon all matters connected with insurance. His duties, report to Minister.

(3) The Lieutenant-Governor in Council may also appoint an officer to be called the Deputy Superintendent of Insurance who shall act as superintendent during the absence or inability of the Superintendent and shall perform such other duties as are assigned to him by this Act, by the Lieutenant-Governor in Council, by the Minister, or by the Superintendent. R.S.O. 1937, c. 256, s. 3. Deputy Superintendent.

4. For the purposes of his duties and in the exercise of his powers under this Act or under any other Act relating to Evidence.

insurance, the Superintendent may require to be made and may take and receive affidavits, statutory declarations and depositions, and may examine witnesses upon oath, and he shall have the same power to summon persons to attend as witnesses, and to enforce their attendance, and to compel them to produce books, documents and things, and to give evidence as any court has in civil cases. R.S.O. 1937, c. 256, s. 4.

Oaths.

5. An oath required by this Act to be taken may be administered and certified to by the Superintendent or by any person authorized to administer oaths in Ontario. R.S.O. 1937, c. 256, s. 5.

Independence of Superintendent and officers.

6. Neither the Superintendent nor any officer under him shall be interested as a shareholder, directly or indirectly, in any insurance company doing business in Ontario. R.S.O. 1937, c. 256, s. 6.

Actions against Superintendent.

7.—(1) Without a fiat of the Attorney-General, no action or proceeding shall be brought or taken against the Superintendent for anything done or omitted in the performance or intended or supposed performance of his duty under this Act, or under any other Act which imposes duties upon him.

Superintendent may bring actions, etc.

(2) The Superintendent may bring actions and institute proceedings in his name of office for the enforcement of any of the provisions of this Act or for the recovery of fees and penalties payable hereunder.

Leave.

(3) No action or proceeding for the recovery of fees and penalties payable hereunder shall be commenced without the leave of the Superintendent. R.S.O. 1937, c. 256, s. 7.

Records of Superintendent.

8.—(1) The Superintendent shall keep in the Department the following books and records:

Licence register.

(a) A register of all licences issued pursuant to this Act, in which shall appear the name of the insurer, the address of the head office, the address of the principal office in Canada, the name and address of the chief or general agent in Ontario, the number of the licence issued, particulars of the classes of insurance for which the insurer is licensed, and such other information as the Superintendent deems necessary.

Securities record.

(b) A record of all securities deposited by each insurer with the Minister, naming in detail the several securities, their par value, their date of maturity and value at which they are received as deposit.

- (c) A record of all claims of which notice of dispute has been filed pursuant to this Act. Claims record.

(2) The books and records required by this section to be kept in the Department shall be open to inspection at such time and upon payment of such fees as may be prescribed by the regulations. R.S.O. 1937, c. 256, s. 8. Inspection.

9.—(1) The Superintendent shall cause to be published in *The Ontario Gazette* in July of each year a list of the insurers licensed at the date of the list, and shall from time to time cause notice of the licence of an insurer not theretofore licensed and notice of suspension or cancellation or revivor of licence to be given by publication in *The Ontario Gazette*. Annual publication in Ontario Gazette, notice of licence.

(2) A certificate under the hand and seal of office of the Superintendent that on a stated day an insurer mentioned therein was or was not licensed under this Act, or that any insurer was originally admitted to licence or that the licence of any insurer was renewed, suspended, revived, revoked or cancelled on a stated day, shall be *prima facie* evidence of the facts stated in the certificate. Certificate of Superintendent is evidence of licence, etc.

(3) A certificate of the filing of any document by this or any former Insurance Act required to be filed in the office of the Provincial Registrar or of the Superintendent shall be *prima facie* evidence of the filing if signed or purporting to be signed by the Deputy or Assistant or by the acting Deputy or Assistant Provincial Registrar or by the Superintendent as the case may be. R.S.O. 1937, c. 256, s. 9. Evidence, filing of documents.

10. The duty of determining the right of any insurer in Ontario to be licensed under this Act, shall devolve upon the Superintendent subject to appeal as hereinafter provided, but nothing in this section shall affect the right of the Lieutenant-Governor in Council or of the Minister to suspend or cancel any licence in the exercise of his authority under this Act. R.S.O. 1937, c. 256, s. 10. Superintendent to determine right of insurer to be licensed.

11.—(1) Every decision of the Superintendent upon an application for a licence shall be in writing and notice thereof shall be forthwith given to the insurer. Decision of Superintendent.

(2) The insurer, or any person interested shall be entitled, upon payment of the prescribed fee, to a certified copy of the decision. Certified copy of.

(3) The evidence and proceedings in any matter before the Superintendent may be reported by a stenographer sworn Stenographic report of evidence.

before the Superintendent to faithfully report the same. R.S.O. 1937, c. 256, s. 11.

Appeal.

12.—(1) An applicant for a licence under this Act or any person who deems himself aggrieved by a decision of the Superintendent, may appeal therefrom to the Court of Appeal.

When to be set down.

(2) The appeal shall be set down for argument at the first sitting of the Court of Appeal which commences after the expiration of thirty days from the decision complained of.

Procedure.

(3) The practise and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court, in an action.

Certificate.

(4) The Superintendent shall certify to the registrar of the Court of Appeal the decision appealed from, his reasons therefor, and the documents, inspection reports, and evidence, if any, and such other information as he had before him in making the said decision. R.S.O. 1937, c. 256, s. 12.

Consequences of failure to answer inquiries.

13. The Superintendent may direct to an insurer any inquiry touching the contracts or financial affairs of the insurer, and the insurer shall be bound to make prompt and explicit answer to any such inquiry, and shall in case of refusal or neglect to answer be guilty of an offence. R.S.O. 1937, c. 256, s. 13.

Access to books.

14. The Superintendent, or any person authorized under his hand or seal of office, shall, at all reasonable times, have access to all the books, securities and documents of an insurer, agent or broker, which relate to contracts of insurance, and any officer or person in charge, possession, custody or control of such books, securities or documents who refuses or neglects to afford such access shall be guilty of an offence. R.S.O. 1937, c. 256, s. 14.

Duty to furnish information on request.

15.—(1) It shall be the duty of the officers and agents of a licensed insurer, and of persons licensed hereunder, or of any insured to furnish the Superintendent on his request with full information relative to any contract of insurance issued by the insurer or to the insured which comes within the terms of sections 88 and 134 or relative to any settlement or adjustment under any such contract.

Inspection.

(2) The Minister may, at his discretion, instruct the Superintendent to visit the head office or chief agency from which the contract was issued, or the office of the adjuster, and inquire into such contract or settlement, and section 14

shall apply *mutatis mutandis* to such inquiry. R.S.O. 1937, c. 256, s. 15.

16.—(1) The Superintendent shall visit personally, or cause a duly qualified member of his staff to visit at least annually the head office or chief office in Ontario of every licensed insurer other than a mutual benefit society having less than three hundred members and an insurer as to which he adopts the inspection of some other government and he shall examine the statements of the condition and affairs of each such insurer filed under this Act, and make such inquiries as are necessary to ascertain its condition and ability to provide for the payment of its contracts as they mature and whether or not it has complied with all the provisions of this Act applicable to its transactions and the Superintendent shall report thereon to the Minister as to all matters requiring his attention and decision.

Annual
inspection
of insurers.

(2) Where the head office of any such insurer is not in Ontario and the Superintendent deems it necessary and expedient to make a further examination into the affairs of the insurer and so reports to the Minister, the Minister may, in his discretion, instruct the Superintendent to visit the head office of such insurer to inspect and examine its affairs and to make such further inquiries as the Minister may require.

Examination
of affairs of
insurer.

(3) The officers or agents of such insurer shall cause the books and records of the insurer to be opened for the inspection of the Superintendent and shall otherwise facilitate such examination so far as it is in their power.

Duty of
officers and
agents.

(4) In order to facilitate the inspection of the books and records of an insurer the insurer may be required by the Superintendent with the approval of the Minister, to produce the books and records at the head or chief office of the insurer in Ontario or at such other convenient place as the Superintendent may direct, and the officer or officers of the insurer who have custody of the books and records shall be entitled to be paid by the insurer for the actual expenses of such attendance.

Production
of books at
head office
or as Super-
intendent
may direct.

(5) The Superintendent with the approval of the Minister may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets or liabilities of any such insurer and the cost thereof upon the certificate of the Superintendent approved by the Minister shall be paid by the insurer.

Examination
of affairs of
an insurer.

(6) Where the office of an insurer at which an examination is made pursuant to this section is out of Ontario, the insurer

Expenses of
examination.

shall pay the account of the Department in connection with such examination upon the certificate of the Superintendent approved by the Minister. R.S.O. 1937, c. 256, s. 16.

Service of
notice or
process on
Super-
intendent.

17.—(1) Where the head office of a licensed insurer is situate outside of Ontario, notice or process in any action or proceeding in Ontario may be served upon the Superintendent and such service shall be deemed service upon the insurer in the case of a corporation and upon members of the insurer in the case of an unincorporated body or association.

Insurer to
file address.

(2) Every licensed insurer shall file in the office of the Superintendent notice of a post office address to which any such notice or process may be forwarded by the Superintendent and shall from time to time notify the Superintendent of any change in the address so filed.

Superin-
tendent to
forward
notice or
process
forthwith.

(3) The Superintendent shall forthwith after the receipt of any such notice or process forward the same to the insurer by registered mail, postage prepaid, addressed in the manner last notified to him for this purpose by the insurer. R.S.O. 1937, c. 256, s. 17.

Annual
report.

18.—(1) The Superintendent shall prepare for the Minister from the statements filed by the insurers and from any inspection or inquiries made, an annual report, showing particulars of the business of each insurer as ascertained from such statement, inspection and inquiries, and such report shall be printed and published forthwith after completion.

Permissible
investments.

Rev. Stat.,
c. 59.

(2) In his annual report the Superintendent shall allow as assets only such of the investments of the several insurers as are authorized by *The Companies Act*, or by their acts or instruments of incorporation, or by the general Acts applicable to such investments.

Superin-
tendent's
corrections
of annual
statements.

(3) In his annual report the Superintendent shall make all necessary corrections in the annual statements made by all licensed insurers as herein provided, and shall be at liberty to increase or diminish the liabilities of such insurers to the true and correct amounts thereof as ascertained by him in the examination of their affairs at the head office thereof in Ontario, or otherwise.

Appraise-
ment of real
estate owned
by insurer.

(4) If it appears to the Superintendent, or if he has any reason to suppose, from the annual statements prepared and delivered to him by all insurers, that the value placed by any insurer, incorporated and licensed in Ontario, upon the real estate owned by it or any parcel thereof is too great, he may either require such insurer to secure an appraisal of such real estate by one or more competent valuers, or may himself

procure such appraisalment at the expense of the insurer, and the appraised value, if it varies materially from the statement or return made by the insurer, may be substituted in the annual report of the Superintendent.

(5) In like manner, if it appears to the Superintendent, or if he has any reason to suppose, that the amount secured by mortgage or hypothec upon any parcel of real estate, together with the interest due and accrued thereon, is greater than the value of such parcel, or that such parcel is not sufficient for such loan and interest, he may procure an appraisalment thereof, and if from the appraised value it appears that such parcel of real estate is not adequate security for the loan and interest, he may write off such loan and interest a sum sufficient to reduce the same to such an amount as may fairly be realizable from such security, in no case to exceed such appraised value, and may insert such reduced amount in his annual report.

Appraisalment of real estate held as security for loans.

(6) In like manner, if it appears to the Superintendent, or if he has any reason to suppose, that the value of any other investments of the funds of the insurer is less than the amount of the value of the investments shown in the books of the insurer he may make or cause to be made an appraisal of such security, and if from the appraised value it appears that the value of the securities as shown on the books of the insurer is greater than its true value as shown by the appraisal he may reduce the book value of the same to such amount as may fairly be realizable therefrom, and in no case to exceed such appraised value, and may insert such reduced amount in his annual report. R.S.O. 1937, c. 256, s. 18.

Appraisalment of other investments.

19. Upon request by the Minister, the Superintendent shall prepare for the consideration of the Lieutenant-Governor in Council, a report upon the petition of any insurer, praying to have its bonds authorized by Order in Council for acceptance in lieu of personal or private suretyship pursuant to any Act of Ontario wherein or whereby the Lieutenant-Governor in Council is empowered to authorize the giving or acceptance of securities or of the personal bonds of sureties, and in such report the Superintendent shall set out all material facts relating to the age, paid-up capital, surplus of assets over liabilities, underwriting experience and generally such other information relating to the financial condition and standing of the insurer as, in his opinion, should govern the granting or refusal of the petition. R.S.O. 1937, c. 256, s. 19.

Superintendent to report on petition for authorization of court bonds.

PART II

GENERAL PROVISIONS APPLICABLE TO
INSURERS IN ONTARIOApplication
of Part.

20.—(1) This Part shall apply to insurance undertaken in Ontario and to all insurers carrying on business in Ontario.

Undertaking
insurance.

(2) Any insurer undertaking a contract of insurance which, under this Act, is deemed to be made in Ontario, whether the contract is original or renewed except the renewal from time to time of life insurance policies, shall be deemed to be undertaking insurance in Ontario within the meaning of this Part.

Carrying on
business.

(3) Any insurer undertaking insurance in Ontario or which within Ontario sets up or causes to be set up any sign containing the name of an insurer, or which within Ontario maintains or operates either in its own name or in the name of its agent or other representative, any office for the transaction of the business of insurance either within or without Ontario, or which, within Ontario distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, printed form or like document, or which within Ontario makes or causes to be made any written or oral solicitation for insurance, or which within Ontario issues or delivers any policy of insurance or interim receipt or collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance or inspects any risk or adjusts any loss under a contract of insurance, or which prosecutes or maintains in Ontario any action or proceeding in respect of a contract of insurance or any club, society or association incorporated or unincorporated which receives either as trustees or otherwise, any contributions or moneys from its members out of which gratuities or benefits are paid directly or indirectly upon the death of its members or any of them, shall be deemed to be an insurer carrying on business in Ontario within the meaning of this Act. R.S.O. 1937, c. 256, s. 20.

LICENCES

Necessity
for licence.

21.—(1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Minister and hold a licence under this Act.

Prohibition:

(2) Every insurer undertaking insurance or carrying on business in Ontario without having obtained a licence as required by this section, shall be guilty of an offence.

(3) Any person who within Ontario does or causes to be done any act or thing mentioned in subsection 3 of section 20 on behalf of or as agent of an insurer not licensed under this Act or who receives directly or indirectly any remuneration for so doing shall be guilty of an offence. Prohibition against person acting on behalf of unlicensed insurer.

(4) The following shall not be deemed insurers within the meaning of this Act or required or entitled to be licensed as such, Exception.

- (a) pension fund societies or employees' mutual benefit societies incorporated under *The Companies Act*; Rev. Stat., c. 59.
- (b) corporations mentioned in clauses *c* and *d* of section 240;
- (c) a trade union in Ontario which, under the authority of its incorporating Act or charter, has an assurance or benefit fund for the benefit of its own members exclusively;
- (d) mutual benefit societies the membership of which is confined to railway employees which do not grant mortuary or funeral benefits.

(5) An insurer incorporated and licensed by Ontario which carries on or solicits business in any foreign jurisdiction without being first authorized so to do under the laws of such foreign jurisdiction, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 21. Unauthorized insurance.

22. Nothing in this Act shall prevent a licensed insurer which has lawfully effected a contract of insurance in Ontario from reinsuring the risk or any portion thereof with any insurer transacting business out of Ontario and not licensed under this Act. R.S.O. 1937, c. 256, s. 22. Reinsurance with unlicensed insurer.

23.—(1) Upon due application and upon proof of compliance with this Act, the Minister may issue a licence to undertake contracts of insurance and carry on business in Ontario to any insurer coming within one of the following classes: What insurers may be licensed.

- (a) joint stock insurance companies;
- (b) mutual insurance corporations;
- (c) cash-mutual insurance corporations;
- (d) fraternal societies;
- (e) mutual benefit societies;

- (f) companies duly incorporated to undertake insurance contracts and not within any of the classes mentioned in clauses *a*, *b*, *c*, *d* and *e*;
- (g) reciprocal or inter-insurance exchanges;
- (h) underwriters or syndicates of underwriters operating on the plan known as Lloyds;
- (i) pension fund associations.

Effect of
licence.

(2) A licence issued pursuant to this Act shall authorize the insurer named therein to exercise within Ontario all rights and powers reasonably incidental to the carrying on of the business of insurance named therein which are not inconsistent with the provisions of this Act or with the terms of its Act or instrument of incorporation or organization. R.S.O. 1937, c. 256, s. 23.

Classes of
insurance.

24.—(1) The Lieutenant-Governor in Council may make regulations determining and defining, for the purposes of this Act and of any licences granted to an insurer hereunder, what shall be distinct classes of insurance.

Licence to
carry on
insurance
business.

(2) Subject to provisions of parts of this Act particularly relating to classes of insurers mentioned in section 23, a licence may be granted to an insurer to carry on any one or more of the classes of insurance defined in section 1 and such other classes as may be prescribed by the regulations.

Determina-
tion of
classes of
insurance
by Super-
intendent.

(3) For the purposes of this Act the Superintendent may determine the class or classes of insurance into which the circumstances or conditions in any case may bring any insurance granted or which may be granted in respect thereto, and the policy form for the class of insurance to be used thereunder.

Limited or
conditional
licence.

(4) Any licence may be issued subject to such limitations and conditions as the Minister may prescribe. 1942, c. 22, s. 2.

Require-
ments where
automobile
policy issued
outside
Ontario.

25. It shall be a condition of a licence to carry on automobile insurance in Ontario, for breach of which such licence may be cancelled, that, in any action or proceeding in Ontario against a licensed insurer, or its insured, arising out of a motor vehicle accident in Ontario, such insurer shall appear, and shall not set up any defence to a claim under a policy issued outside of Ontario which might not be set up if such policy were issued in Ontario, in accordance with the law of Ontario relating to motor vehicle liability policies. R.S.O. 1937, c. 256, s. 25.

26. Every insurer licensed for the transaction of life insurance may, under the authority of its licence, unless the licence expressly provides otherwise, issue annuities and endowments of all kinds and also include in any policy of life insurance, in respect of the same life or lives insured thereby, disability insurance and double indemnity insurance. R.S.O. 1937, c. 256, s. 26. Scope of life insurance licence.

27. Every insurer licensed for the transaction of fire insurance may, subject to its Act of incorporation and the restrictions prescribed by the licence, insure the same risk against loss or damage from falling aircraft, earthquake, tornado, hail, sprinkler leakage, limited or inherent explosion, civil commotion and impact by vehicles and such other classes of insurance as may be prescribed by the regulations. 1940, c. 11, s. 1. Scope of fire insurance licence.

28.—(1) A licence shall not be granted,

Restrictions on granting licences.

(a) to a joint stock insurance company undertaking life insurance, unless the company shall furnish to the Superintendent satisfactory evidence that of the capital stock not less than \$200,000 has been *bona fide* subscribed for and allotted, and at least \$100,000 of the subscribed stock has been paid in, in cash;

Joint stock companies.

(b) to a joint stock insurance company undertaking any one or more classes of insurance other than life, except upon proof,

(i) where such company is undertaking insurance in Ontario only, that of the capital stock not less than \$50,000 has been *bona fide* subscribed and allotted, and at least \$25,000 of the subscribed stock has been paid in, in cash, and

(ii) where such company is undertaking insurance in Ontario and elsewhere, that of the capital stock not less than \$100,000 has been *bona fide* subscribed and allotted, and at least \$50,000 of the subscribed stock has been paid in, in cash.

(2) A licence shall not be granted to a mutual insurance corporation, a cash-mutual insurance corporation, an insurance company mentioned in clause *f* of subsection 1 of section 23, a reciprocal or inter-insurance exchange, or to an underwriter or syndicate of underwriters operating on the plan known as Lloyds, except upon proof that the net surplus of assets over all liabilities exceeds the amount fixed by subsection 1 for the paid in capital stock of joint stock insurance companies, and that Other insurers.

such net surplus of assets over all liabilities together with the contingent liability of members, if any, exceeds the amount fixed by subsection 1 for the subscribed and allotted capital stock of joint stock insurance companies for the respective classes of insurance mentioned therein.

Application
of sub-
section 2.

(3) Subsection 2 shall not apply to a purely mutual insurance corporation incorporated under the law of Ontario and insuring only risks other than mercantile and manufacturing on the premium note plan.

Application
of other
Parts.

(4) A licence shall not be granted to any insurer except upon proof that such insurer has complied with the provisions of the respective Parts of this Act and regulations applicable thereto.

Licence for
both fire
and life.

(5) A licence shall not be granted to an insurer for the transaction of both fire and life insurance unless it maintains separate and distinct accounts, funds, and securities in respect of its business of life insurance, and those funds and securities are available only for the protection of the holders of its policies of life insurance and are not liable for the payment of claims arising from any other class of insurance which the insurer undertakes, and the insurer complies with such other requirements as the Superintendent may impose for the purposes of this provision.

Evidence
by insurer
when head
office is
outside of
Ontario.

(6) Where the head office of an applicant for a licence under this Act is situate outside of Ontario, a licence shall not be granted except upon proof of the applicant's ability to provide for the payment at maturity of all its contracts, but the Superintendent may accept as sufficient the fact that such an insurer is licensed by any other government in Canada.

Licence of
extra-
provincial
corporation.

(7) A licence shall not be granted to a corporation which is incorporated under the law of a province other than that of the Province of Ontario unless the head office and chief place of business of such corporation is situate within the boundaries of such province. R.S.O. 1937, c. 256, s. 27.

Information
preliminary
to licence.

29. The Superintendent may require such notice of the application for a licence to be given by publication in *The Ontario Gazette* and elsewhere as he deems necessary. R.S.O. 1937, c. 256, s. 28.

Documents
to be filed by
applicants
for licence.

30.—(1) Before the issue of a licence to an insurer such insurer shall file in the office of the Superintendent the following documents:

(a) a certified copy of the Act or other instrument of incorporation or association of the insurer and of its

constitution and by-laws and regulations verified in a manner satisfactory to the Superintendent;

- (b) a certified copy of the last balance sheet of the insurer and auditor's report thereon;
- (c) if the head office of the insurer is outside of Ontario notice of the place where the chief office of the insurer in Ontario is to be situate;
- (d) copies of all policy forms and forms of application for insurance proposed to be used by the insurer in Ontario;
- (e) any other evidence or documents required by other Parts of this Act.

(2) The applicant for a licence shall furnish such other Evidence. evidence as the Superintendent may deem necessary that the requirements of this Act have been complied with and that the applicant is entitled to the licence applied for. R.S.O. 1937, c. 256, s. 29.

31.—(1) Upon application being made for a licence under this Act by an insurer incorporated after the commencement of this Act under any general or special Act of Ontario, there shall be submitted to the Superintendent a sworn statement setting forth the several sums of money paid in connection with the incorporation and organization of the insurer, and such statement shall, in addition, include a list of all unpaid liabilities, if any, in connection with or arising out of such incorporation and organization. Statement of expenses of organization.

(2) Until the licence is granted, no payments on account of expenses of incorporation and organization shall be made out of the moneys paid in by shareholders except reasonable sums for the payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expense of travel, if any. To what limited.

(3) The Minister shall not issue the licence until he is satisfied that all the requirements of this Act and of *The Companies Act*, as to the subscriptions to the capital stock, the payment of money by shareholders on account of their subscriptions, the election of directors and other preliminaries have been complied with, and unless he is satisfied that the expenses of incorporation and organization, including the commission payable for the sale of the stock of the insurer are reasonable. R.S.O. 1937, c. 256, s. 30. Conditions precedent to issue of licence. Rev. Stat., c. 59.

Right to
licence.

Rev. Stat.,
c. 59.

32. An insurer which has applied for a licence and has complied with the requirements of this Act and of *The Companies Act* shall be entitled to the licence. R.S.O. 1937, c. 256, s. 31.

Form of
licence.

33.—(1) Subject to the provisions of section 279 the licence shall be in such form or forms for the different classes of insurers, as may be from time to time determined by the Minister, and shall specify the business to be carried on by the insurer.

Term of
licence.

(2) The licence shall expire on the 30th day of June in each year, and may be renewed from year to year, provided that such licence may be from time to time renewed for any term less than a year. R.S.O. 1937, c. 256, s. 32.

Notice of
disputed
claims to
Super-
intendent.

34. An insurer shall give notice in writing to the Superintendent of every disputed claim arising from loss insured under a contract made in Ontario within sixty days after proof of the loss or of the happening of the event upon which the insurance money is to become payable. R.S.O. 1937, c. 256, s. 33.

Failure
to pay
undisputed
claim.

35.—(1) Where written notice has been served on the Superintendent and upon proof of an undisputed claim arising from loss insured against in Ontario remaining unpaid for the space of sixty days after being due or of a disputed claim after final judgment in the regular course of law and tender of a legal, valid discharge being unpaid the licence of the insurer shall *ipso facto* be null and void and shall be deemed to be cancelled.

Revival of
licence.

(2) Such licence may be revived and the insurer may again transact business if, within six months after notice to the Superintendent of the failure of the insurer to pay any undisputed claim or the amount of any final judgment as provided in this section, such undisputed claim or final judgment upon or against the insurer in Ontario is paid and satisfied. R.S.O. 1937, c. 256, s. 34.

Failure to
keep deposit
unimpaired.

36. When the insurer fails to keep unimpaired the deposit, if any, hereinafter required, the Minister may suspend or cancel the licence of the insurer. R.S.O. 1937, c. 256, s. 35.

Insufficiency
of assets to
be reported
by Super-
intendent.

37.—(1) If the Superintendent, upon examination, or from annual statements, or upon other evidence, finds that the assets of any insurer are insufficient to justify the continuance of the insurer in business or to provide proper security to persons effecting insurance with the insurer in Ontario or

that the insurer has failed to comply with any provision of law or with the Act or instruments of incorporation or association of the insurer, he shall so report to the Minister.

(2) If it appears in the case of an insurer undertaking contracts of life insurance, that its policy reserves, and, in the case of any other insurer, that its unearned premiums, in both cases, respecting outstanding contracts within the meaning of sections 88 and 134, together with any other liabilities in Ontario, exceed its assets in Ontario, including the deposit in the hands of the Minister, the assets of the insurer shall be deemed insufficient to justify the continuance of the insurer in business within the meaning of subsection 1, and the Superintendent shall so report to the Minister.

When assets
deemed
insufficient.

(3) If the Minister, after consideration of the report and after a reasonable time has been given to the insurer to be heard by him, and upon such further inquiry and investigation as he thinks proper to make, reports to the Lieutenant-Governor in Council that he concurs in the report of the Superintendent, the Lieutenant-Governor in Council may suspend or cancel the licence of the insurer.

Suspension
or cancel-
lation.

(4) Notice of such suspension or cancellation of the licence shall be published in *The Ontario Gazette* and elsewhere as the Minister may direct and thereafter any person transacting business on behalf of the insurer except for winding-up purposes shall be guilty of an offence.

Notice.

(5) Where the Superintendent has reported as provided in subsection 1, the Minister or the Lieutenant-Governor in Council may direct the issue of such modified, limited or conditional licence as may be deemed necessary for the protection of persons in Ontario who have effected or effect contracts of insurance with the insurer.

Limited or
conditional
licence.

(6) Upon the suspension or cancellation of the licence of an insurer by any government in Canada, the Superintendent may suspend or cancel the licence of such insurer under this Act.

Application
to licensees
of any
government
in Canada.

38. Where the licence of an insurer is suspended or cancelled under this Act, it may be revived if the insurer makes good the deposit, or the deficiency, as the case may be, to the satisfaction of the Minister. R.S.O. 1937, c. 256, s. 37.

Revival of
licence.

39. It shall be the duty of the Superintendent to report to the Minister any violation of any of the provisions of this Act by any insurer licensed thereunder and thereupon the Minister may, in his discretion, suspend or cancel or refuse to renew the insurer's licence. R.S.O. 1937, c. 256, s. 38.

Report on
violation
of Act.

DEPOSITS

Meaning of
"insurer" in
sections
41 to 71.

40.—(1) Subject to subsections 2, 3 and 4, "insurer", in sections 41 to 71 shall be deemed to include only joint stock insurance companies, cash-mutual insurance corporations, insurance companies mentioned in clause *f* of subsection 1 of section 23, insurers which undertake life insurance except fraternal societies, and underwriters or syndicates of underwriters operating on the plan known as Lloyds.

Application
to Dominion
licensees.

(2) The provisions of sections 41 to 71 shall not apply to an insurer maintaining a reciprocal deposit with the government of another province pursuant to sections 46 to 49, or expressly exempted by order of the Lieutenant-Governor in Council. R.S.O. 1937, c. 256, s. 39 (1, 2).

Application
of ss. 41 to 71.

(3) The provisions of sections 41 to 71 shall not apply to an insurer in respect of its business of marine insurance. 1942, c. 22, s. 3.

Application
to Lloyds.

(4) The provisions of sections 41 to 71 shall not apply to an underwriter or syndicate of underwriters which is a member of the society known as Lloyds, incorporated by the Imperial Statute, *Lloyds Act, 1871*.

Meaning of
"approved
securities".

(5) In sections 41 to 71, "approved securities" means securities of or guaranteed by Canada or by any province of Canada, securities of any incorporated municipality of Canada, and such other securities as are authorized for the investment of trust funds under the law of the province in which they are offered for deposit and approved by the Superintendents of Insurance of the provinces of Canada in which the insurer is carrying on business. R.S.O. 1937, c. 256, s. 39 (3, 4).

Amount of
deposit.

41.—(1) Every insurer carrying on the business of insurance in Ontario shall, before receiving a licence under this Act, deposit approved securities with the Minister in the following amounts:

- (a) where the insurer undertakes life insurance—\$50,000;
- (b) where the insurer undertakes any one or more classes of insurance other than life,
 - (i) in Ontario only—\$25,000,
 - (ii) in Ontario and elsewhere—\$50,000.

Excess
deposit.

(2) The maximum deposit required from an insurer shall be \$50,000, but an insurer may voluntarily make a deposit in excess of the amount prescribed by this section but no part of

a voluntary deposit shall be withdrawn without the sanction of the Minister. R.S.O. 1937, c. 256, s. 40.

42.—(1) The value of such securities shall be estimated at ^{Value at which securities received.} their market value, not exceeding par, at the time when they are deposited.

(2) If any other than approved securities are offered as a ^{Other securities.} deposit, the Minister may accept the same on such valuation and on such conditions as he may deem proper.

(3) If the market value of any securities which have been ^{Further deposit if below market value.} deposited by an insurer declines below that at which they were deposited, the Minister may notify the insurer to make such further deposit as will ensure the accepted value of all the securities deposited by the insurer being equal to the amount which is required by this Act to be deposited.

(4) On failure by the insurer to make such further deposit ^{Failure to make further deposit.} within sixty days after being called upon so to do, the Minister may suspend or cancel the licence. R.S.O. 1937, c. 256, s. 41 (1-4).

(5) The property in any stock, bonds or debentures deposited ^{Title to securities.} with the Minister under this Act or any predecessor thereof shall be vested in the Minister by virtue of his office without any formal transfer while such stock, bonds or debentures form the whole or any part of the deposit required by this Act. R.S.O. 1937, c. 256, s. 41 (5), *amended*.

(6) So long as the conditions of this Act are satisfied and ^{Interest upon deposits.} no notice of any final judgment against the insurer or order for its winding-up, or for the distribution of its assets or for administration of its deposit is given to the Minister, the insurer shall be entitled to receive the interest upon the securities forming the deposit. R.S.O. 1937, c. 256, s. 41 (6).

43. Where an insurer desires to substitute other approved ^{Substitution of securities.} securities for securities deposited the Minister may permit the substitution to be made. R.S.O. 1937, c. 256, s. 42.

44.—(1) Where it is made to appear that any such insurer, ^{Withdrawal of deposit in certain cases,} having made a deposit with the Minister, has made a deposit with any other government in Canada, the insurer shall be entitled, with the sanction of the Lieutenant-Governor in Council, to withdraw the deposit with the Minister.

(2) If at any time it appears that an insurer has on deposit ^{Withdrawal of excess deposit.} with the Minister under this Act a sum in excess of the prescribed amount, the Minister, upon being satisfied that the interest of persons effecting contracts of insurance with the

insurer in Ontario will not be prejudiced thereby, and upon giving such notice in *The Ontario Gazette* and taking such other precautions as he deems expedient, may authorize the withdrawal of the amount of such excess or such portion thereof as he deems advisable; but the Minister may authorize such withdrawal without giving notice. R.S.O. 1937, c. 256, s. 43.

Return of
deposit on
ceasing to do
business.

45.—(1) An insurer which has ceased to transact business in Ontario and desires to obtain a return of its deposit may give written notice to that effect to the Superintendent, and shall publish in *The Ontario Gazette* a notice that it has applied to the Lieutenant-Governor in Council for the return of its deposit, calling upon all claimants, contingent or actual, who object to the return to file their objections with the Superintendent on or before a day named in the notice, which shall not be less than three months after the first publication of it.

Filing list of
outstanding
contracts.

(2) Upon giving the notice to the Superintendent the insurer shall file with him a list of all its outstanding contracts of insurance, including contracts in respect of which claims have accrued.

Return of
deposit on
proof of
discharge of
contracts.

(3) After the day named in the notice, if the Minister is satisfied that the insurer has obtained a discharge of all such outstanding contracts, the Lieutenant-Governor in Council may direct that the deposit be returned.

Return of
part of
deposit.

(4) If the Minister is not satisfied that all such contracts have been discharged the Lieutenant-Governor in Council may direct that a sufficient amount be retained to meet the contracts unprovided for and that the remainder of the deposit be returned, and thereafter from time to time as such contracts lapse or proof is adduced that they have been satisfied further return of the deposit may be directed by the Lieutenant-Governor in Council. R.S.O. 1937, c. 256, s. 44.

RECIPROCAL DEPOSITS

Interpre-
tation.

46.—(1) In sections 47 and 48, "contracts" in relation to any other province of Canada has the meaning assigned to it by the Act of that province under which insurers are licensed to carry on the business of insurance.

Application
of ss. 46,
47, 48.

(2) This section and sections 47 and 48 shall be applicable notwithstanding that the insurer is or may become licensed in one province for classes of insurance different from those for which it is or may become licensed in another province. R.S.O. 1937, c. 256, s. 45.

47.—(1) Where an insurer has its head office for Sole deposit of insurer in Ontario. Canada in Ontario and makes a deposit under this Act for the purposes of this section, by virtue whereof the insurer will not be required to make a deposit in another province in which it is or may become licensed to undertake insurance, the following provisions shall have effect, and to the extent that they are inconsistent with any other provision of this Act shall prevail over that provision, namely,

- (a) the amount of the deposit to be made and maintained by the insurer shall be fixed by the Lieutenant-Governor in Council, and shall be not less than \$50,000;
- (b) the deposit shall be held and administered as security *pari passu* for its contracts in Ontario and its contracts in any other province where it is or may become licensed to undertake insurance, and as security also for all fees, taxes, and costs payable by it to this and any other province;
- (c) the Minister shall, upon the request of the official who issues or proposes to issue a licence to the insurer in another province, certify under his hand that the deposit is held in manner provided by clause *b*, and the Superintendent shall forward the certificate to that official and a copy to the Superintendent of Insurance in each province;
- (d) where, with respect to the outstanding contracts of the insurer, it appears to the Superintendent from the annual statement under section 74 or any examination of the affairs of the insurer that a further deposit for the purposes of this section is necessary, or where it appears to the Superintendent of Insurance for another province in which the insurer is licensed from any annual report made to him by the insurer or any examination of the affairs of the insurer that a further deposit for the purposes of this section is necessary, and such Superintendent requests the Superintendent to obtain a further deposit, the insurer shall forthwith deposit such further sum as the Lieutenant-Governor in Council may fix;
- (e) where the licence of the insurer is suspended or cancelled under this Act, the Superintendent shall give immediate notice to the Superintendent of Insurance in each province;
- (f) where the insurer ceases to carry on insurance business in Canada and its deposit may be withdrawn

under this Act, or where its deposit becomes liable to administration under this Act, the Superintendent shall notify the Superintendent of Insurance in each province, and all claims and liabilities arising in any such province shall be verified by the Superintendent of Insurance there and a statement thereof communicated to the Superintendent;

- (g) where the insurer withdraws from, or its licence is suspended or cancelled in, or its deposit becomes liable to administration under the law of another province, and notice thereof is given to the Superintendent, the Minister and the Superintendent shall, upon request of the Superintendent of Insurance in that province, take such steps as would be taken if the insurer were withdrawing from, or its licence were suspended or cancelled in, or its deposit had become liable to administration in Ontario, and all claims and liabilities arising in that province shall be verified by the Superintendent of insurance there and a statement thereof communicated to the Superintendent.

Insurer not to remove head office without consent.

- (2) The insurer shall not change the situation of its head office to another province without the consent of the Minister, but where the Minister so consents he may authorize the Superintendent to transfer the insurer's deposit to the Minister responsible for the deposit in that province, or to the insurer, as the Minister in that province requests. R.S.O. 1937, c. 256, s. 46.

Sole deposit of insurer in another province.

48.—(1) Where the insurer has its head office for Canada in another province and there makes a deposit of such amount as shall be fixed by the proper authority in that province, and which shall not be less than \$50,000, and which deposit is under the laws of that province held as security *pari passu* for its contracts in that province and its contracts in this and any other province where it is or may become licensed to undertake insurance, and as security also for all fees, taxes, and costs payable by it to each province, the Minister, upon receipt of a certificate from the Minister of that province responsible for the deposit that the deposit is and will be so held as aforesaid, and of the consent of the insurer to its being so held, shall exempt the insurer from the provisions of this Act requiring it to make and maintain a deposit.

When deposit liable, the Superintendent to advertise for contracts.

- (2) Where the deposit of the insurer becomes liable to administration for the purpose of satisfying its claims and liabilities arising in Ontario, the Superintendent shall, by notice in *The Ontario Gazette* or otherwise at the cost of the insurer, ascertain and advertise for particulars of all out-

standing contracts of and claims against the insurer, verified in such manner as may seem advisable to him and shall upon receipt of the same properly verified communicate a statement thereof to the Superintendent of Insurance for the province holding the deposit, with particulars of any other liabilities for which the deposit is held as security.

(3) Where a licensed insurer is exempted under this section, ^{Where insurer exempted.} the Minister shall transfer its deposit under this Act to the Minister responsible for the deposit in the province in which the insurer has its head office and which will hold the deposit, or to the insurer, as that Minister requests.

(4) Every provision of this section shall prevail over any other provision of this Act to the extent that it is inconsistent ^{This section to prevail.} with such other provision. R.S.O. 1937, c. 256, s. 47.

49.—(1) The Lieutenant-Governor in Council may, on being satisfied that any other province has enacted provisions identical with or substantially the same as sections 46 to 48, ^{Power to apply ss. 46 to 48 to other provinces.} direct by Order in Council that those sections shall apply to that province. R.S.O. 1937, c. 256, s. 48 (1); 1946, c. 42, s. 1 (1).

(2) A copy of every Order in Council under this section shall be sent to the Superintendent of Insurance in each province. 1946, c. 42, s. 1 (2). ^{Orders in Council to be sent to Superintendent in each Province.}

50.—(1) Where a licensed insurer, hereinafter called the continuing insurer, has, by purchase or otherwise, acquired the assets and assumed the liabilities, within Ontario, of another licensed insurer, hereinafter called the discontinuing insurer, or reinsured all the contracts of a discontinuing insurer outstanding within Ontario, the Lieutenant-Governor in Council may, upon the application of the continuing insurer, and upon the report of the Superintendent, direct the transfer of the deposit held by the Minister under this Act in the name of the discontinuing insurer to the continuing insurer. ^{Transfer of deposit on purchase or reinsurance.}

(2) In any such case the deposit so transferred shall thereafter be treated and dealt with under this Act in the same manner as though it had been originally deposited by the continuing insurer. R.S.O. 1937, c. 256, s. 49. ^{Transferred deposit, how dealt with.}

ADMINISTRATION OF DEPOSIT

51. The deposit made by any insurer under this Act shall be subject to administration in the manner hereinafter provided. R.S.O. 1937, c. 256, s. 50. ^{Deposit subject to administration.}

Deposit security for certain contracts only.

52. Creditors of the insurer in respect of claims under contracts of insurance which have for their subject property in Ontario or property in transit to or from Ontario, or the life, safety, fidelity or insurable interest of some persons resident, or whose head office is situate in Ontario, or where the contract itself makes payment thereunder primarily payable to some resident of Ontario, or to some incorporated company the head office of which is situate in Ontario, shall be entitled to share in the proceeds of the deposit. R.S.O. 1937, c. 256, s. 51.

Who may make application.

53. Application for administration may be made to the Superintendent by any person entitled to share in the proceeds of the deposit. R.S.O. 1937, c. 256, s. 52.

When order for administration may be made.

54.—(1) An order for administration of the deposit of any insurer may be made by the Superintendent, with the approval of the Minister at any time when, in his opinion, it is necessary or desirable for the protection of creditors entitled to share in the proceeds of the deposit.

Evidence.

(2) Any applicant for administration shall be entitled to an order for administration upon proof,

- (a) that the licence of the insurer has been cancelled, and that its assets are insufficient to discharge its outstanding contracts; or
- (b) that an order has been made for the winding-up of the insurer; or
- (c) that the insurer has failed to pay any undisputed claim arising under any contract of insurance in respect to which the deposit is subject to administration for the space of sixty days after it is due, or has failed to pay a disputed claim after final judgment and tender of a legal, valid discharge.

Notice.

(3) No order for administration shall be made unless and until at least two clear days notice of the intention of the Superintendent to make such an order or of the application for such an order has been served upon the insurer, or where the insurer is in liquidation, upon the liquidator of the insurer. R.S.O. 1937, c. 256, s. 53.

Relation to winding-up of insurer.

55. The administration proceedings shall not affect any winding-up of the insurer and shall be carried on independently of such winding-up. R.S.O. 1937, c. 256, s. 54.

Vesting and Disposition of securities.

56. The property in the securities deposited with the Minister under this Act shall, upon the making of an order for

the administration of the deposit, vest in the Superintendent and may be held, sold or dealt with by him for the benefit of creditors entitled to share in the proceeds of the deposit in such manner and after such notice and formalities as he deems proper.—R.S.O. 1937, c. 256, s. 55.

57.—(1) Where an order for administration is made, the Superintendent shall proceed to administer the deposit in the manner hereinafter provided. Superintendent to administer.

(2) For the purposes of the administration the Superintendent may engage such clerical and other assistance and make such other disbursements as he may deem necessary and proper, and expenses so incurred shall be forthwith payable by him out of the proceeds of the deposit. Expenses of administration. R.S.O. 1937, c. 256, s. 56.

58. The Superintendent shall forthwith after an order of administration is made, fix a date within which all claimants against the deposit shall be required to file their claims, and publish in *The Ontario Gazette* and in the official *Gazette* of each province in which the insurer carries on business, and in two newspapers published at or nearest to the place where the head office of the insurer is situate, and in such other manner as he may deem necessary and proper, notice that an order for the administration of the deposit of the insurer has been made and calling upon all claimants to file their claims on or before the date so fixed by him. Notice of order and date within which claims must be filed. R.S.O. 1937, c. 256, s. 57.

59.—(1) The Superintendent shall forthwith call upon the insurer, the agents of the insurer or upon the liquidator to furnish a statement of all its outstanding contracts and of the persons entitled to share in the proceeds of the deposit. Insurer to furnish statement.

(2) The books, financial statements, policy records, schedules, accounts and vouchers of any insurer in respect of whose deposit an order for administration has been made, whether in the custody of the insurer, agents of the insurer or the liquidator, shall be accessible to the Superintendent or to any person authorized under his hand and seal, and any insurer or any officer thereof, or any agent or liquidator who refuses or neglects to afford such access shall be guilty of an offence. Access to books and records of insurer. R.S.O. 1937, c. 256, s. 58.

60.—(1) Except in the case of life insurance, claimants in respect of judgments obtained and claims accrued or matured at the date of the administration order shall be entitled to payment of their proved claims in full in priority to claimants Priorities, other than life insurance.

in respect of unearned premiums and, subject thereto, claimants in respect of unearned premiums shall be entitled to claim such part of the premium paid as is proportionate to the period of their contracts respectively unexpired at the date of the administration order or at the date of the winding-up of the insurer if a winding-up order was previously made.

Life insurance.

(2) In the case of life insurance, claimants in respect of judgments obtained and claims accrued or matured, shall rank in the distribution of the proceeds of the deposit *pari passu* with claimants in respect of unmatured contracts, and claimants in respect of unmatured contracts shall be entitled to claim for the full amount of the legal reserve in respect of their contracts determined according to the valuation thereof approved by the Superintendent in accordance with this Act. R.S.O. 1937, c. 256, s. 59.

Certain persons not entitled to share in proceeds of deposit.

61. A person who holds security for his claim under a contract of insurance, or who is entitled to share in the administration of a fund deposited with the government of any other province for the protection of persons resident in that province shall only be entitled to share in the administration of the Ontario fund if he abandons such special security and releases his claim upon any other government fund. R.S.O. 1937, c. 256, s. 60.

Claims accruing within thirty days of administration order.

62. The holder of a policy or contract of insurance which matures or upon which a claim accrues within thirty days after the making of the administration order, shall be entitled to claim as a creditor at any time before the date fixed by the Superintendent within which all claims must be filed or within thirty days thereafter, for the full amount of such claim; provided that no claim which accrued after the expiration of the thirty days hereinbefore mentioned shall rank upon the deposit, unless or until there is sufficient to pay all other creditors in full. R.S.O. 1937, c. 256, s. 61.

Notice to claimants where proof required.

63.—(1) The Superintendent shall give notice to claimants who have sent in their claims to him, or of whose claims he has notice, and whose claims he considers should not be allowed without proof, requiring such claimant to attend before him on a day named in such notice and prove their claims.

Failure to attend.

(2) In case any claimant does not attend in pursuance of such notice, his claim shall be disallowed, unless the Superintendent sees fit to grant further time for the proof thereof.

Order of Superintendent.

(3) If any claimant attends in pursuance of such notice the Superintendent may on hearing the matter, make an order

allowing or disallowing his claim in whole or in part. R.S.O. 1937, c. 256, s. 62.

64.—(1) All claimants notified to attend before the Superintendent to prove their claims and all parties interested in such claims may be represented before the Superintendent by counsel and the Superintendent may make such order as seems proper to him in respect to the payment of the costs of the parties so attending as amongst themselves or out of the proceeds of the deposit. Counsel, costs.

(2) A record of all correspondence, documents and evidence taken before the Superintendent relating to each disputed claim, together with a copy of the order of the Superintendent, shall be preserved in the office of the Superintendent. R.S.O. 1937, c. 256, s. 63. Record.

65.—(1) Any claimant, or any person interested in any claim may, at any time within fifteen days of the making by the Superintendent of an order with respect to any disputed claim, serve upon the Superintendent and upon all persons parties to the proceedings before the Superintendent, notice of his intention to appeal from the order of the Superintendent. Appeal.

(2) Such notice shall be served at least ten clear days before such notice of appeal is filed with the court. Notice.

(3) The practice and procedure upon appeal from an order of the Superintendent shall be the same, as nearly as may be, as upon an appeal from a judge in the trial of an action. Procedure on appeal.

(4) The Superintendent upon receiving notice of the intention of any claimant or interested party to appeal, shall forthwith certify the record, which shall include the correspondence, the documents and evidence relating to the claim and transmit the same with a copy of his order to the registrar of the Supreme Court. R.S.O. 1937, c. 256, s. 64. Record.

66.—(1) The Superintendent shall prepare schedules of claimants showing those persons who appear by the books and records of the insurer to be entitled to share in the proceeds of the deposit and those persons who have filed claims pursuant to notice and whose claims have been approved by him, together with the name and address of each claimant, the particulars of the contract of insurance upon which the claim is based and the amount for which each claimant is entitled to rank upon the fund. Schedule of claimants.

(2) A copy of the completed schedules certified by the Superintendent shall be duly filed in his office at Toronto and Filing of schedules, notice.

notice of such filing shall forthwith be given by him in the manner provided in section 58 for the publication of the notice of the making of an order of administration.

Inspection
and
notice of
dispute.

(3) Thereupon the schedules shall be open to inspection and, at any time within fifteen days after publication of the notice of such filing, any claim ranked or omitted to be ranked in such schedules may be contested by any person interested by serving a notice of dispute upon the Superintendent.

Hearing of
disputed
claims.

(4) The provisions of sections 63, 64 and 65, relating to proof of claims before the Superintendent and appeal from the order of the Superintendent in that behalf, shall apply, *mutatis mutandis*, to claims of which a notice of dispute is served pursuant to subsection 3.

When claims
barred.

(5) At the expiration of fifteen days after publication of the notice of filing of the schedules, the claims as allowed in the schedules shall be deemed to be final and binding, except in cases where notice of dispute has been filed or appeals from an order of the Superintendent are pending, and all claims of which notice has not been received, and which are not shown in the schedules, shall be forever barred. R.S.O. 1937, c. 256, s. 65.

Reinsurance
in lieu of
claims.

67. At any time before the filing of the schedules as aforesaid, the Superintendent may arrange with any licensed insurer for the reinsurance by such insurer of the outstanding risks or any class thereof of the insurer and apply such part of the proceeds of the deposit as may be agreed upon as the consideration for such reinsurance and, in such case, the arrangement for reinsurance shall be in lieu of all claims for unearned premiums in respect of the contracts so reinsured. R.S.O. 1937, c. 256, s. 66.

Reserve for
disputed or
contingent
claims.

68. Where the Superintendent is of opinion that the proceeds of the deposit should be distributed while appeals from his orders are still pending, and while there are contingent claims still undetermined, he may before making such distribution, set aside a reserve estimated by him to be sufficient to cover all such disputed or contingent claims and the expenditure necessary to complete the administration. R.S.O. 1937, c. 256, s. 67.

Statement of
accounts.

69.—(1) The Superintendent shall prepare a statement of his account verified by affidavit, including particulars of the disposition of the securities deposited by the insurer under this Act, and of all moneys received and disbursed by him in connection with the administration, together with all accounts and vouchers relative thereto.

(2) The Superintendent shall submit his accounts to the master of the Supreme Court who shall appoint a day for the passing thereof and require such notice of the appointment for passing the accounts to be given as he may deem necessary and proper. Passing of accounts before master.

(3) The master may make an order allowing or disallowing any item of the accounts and, in any such order, shall allow the Superintendent such remuneration for the performance of his duties in administering the deposit as he may deem proper, and determine the rate of dividend payable to claimants according to their respective priorities. R.S.O. 1937, c. 256, s. 68. Order of master.

70.—(1) Forthwith after the passing of his accounts by the master the Superintendent may proceed to distribute the proceeds of the deposit, less any reserve he may set aside pursuant to section 68, *pro rata* among the claimants in accordance with the schedule and the rate of dividend determined by the master. Distribution of proceeds of deposit.

(2) Where the proceeds of the deposit are not sufficient to pay all claims in full, the acceptance of any dividend out of such proceeds shall not prejudice the right of any claimant to rank as a creditor upon the general estate of the insurer for the unpaid balance of such claim or bar any recourse policyholders may have, either at law or in equity, against the insurer. When deposit not sufficient, creditor may rank on general estate.

(3) If any balance remains in the hands of the Superintendent after distribution of the dividend ordered by the master, settlement of all disputed or contingent claims and payment of the expenses of the administration, the master may, by order, direct the distribution of a further dividend, or if the amount is insufficient to justify the payment of a further dividend he may direct that such amount be paid over to the liquidator or the insurer. R.S.O. 1937, c. 256, s. 69. Master to direct disposition of any balance.

71. Upon the completion of the distribution of the proceeds of the deposit the Superintendent shall submit his final accounts to the master, and the master may, on the passing thereof, make an order approving such accounts and formally discharging the Superintendent as administrator. R.S.O. 1937, c. 256, s. 70. Final passing of accounts.

RECORDS AND RETURNS

72.—(1) Every licensed insurer which carries on in Ontario the business of fire insurance shall keep a record of its premium income derived from risks located in Ontario and of claims paid in respect of such risks so as to show at any time its experience according to the classification of occupancy hazards Record of premium income and losses.

of the National Board of Fire Underwriters, with such modifications as the Superintendent may prescribe.

Audit and direction where records not duly kept.

(2) If, at any time, it appears to the Minister on the report of the Superintendent that such records are not kept in such a manner as to show correctly the experience of the insurer in Ontario as herein required the Minister may nominate a competent accountant to proceed under his direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly thereafter.

Expenses of audit.

(3) The expense of such an audit shall be borne by the insurer and shall not exceed \$15 per day and necessary travelling expenses of the accountant nominated and the account shall, when certified and approved under the hand of the Superintendent, be paid by the insurer forthwith.

Annual statement of premium income and losses.

(4) Every licensed insurer undertaking the business of fire insurance in Ontario, shall prepare and file annually with the Superintendent on or before the 1st day of July in each year, on a printed form to be supplied by the Superintendent, a sworn statement of the premium income and losses experienced within Ontario for the calendar year next preceding the date of the return according to the records required to be kept by this section.

Contravention of section an offence.

(5) Any insurer and the principal officer within Ontario of any insurer which contravenes the provisions of this section shall be guilty of an offence. R.S.O. 1937, c. 256, s. 71.

Record of automobile premiums and costs.

73.—(1) Every licensed insurer which carries on in Ontario the business of automobile insurance shall prepare and file, when required with the Superintendent, or with such statistical agency as he may designate, a record of its automobile insurance premiums, and of its loss and expense costs in Ontario, in such form and manner, and according to such system of classification, as he may approve.

Compilation of data, expense.

(2) The Superintendent may require any agency so designated to compile the data so filed in such form as he may approve, and the expense of making such compilation shall be apportioned among the insurers whose data is compiled by such agency by the Superintendent who shall certify in writing the amount due from each insurer and the same shall be payable by the insurer to such agency forthwith.

Application, s. 72, subss. 2, 3 and 5.

(3) Subsections 2, 3 and 5 of section 72 shall apply *mutatis mutandis* to this section. R.S.O. 1937, c. 256, s. 72.

74.—(1) Subject to section 271, every licensed insurer shall prepare annually and deliver to the Superintendent on or before the last day of February of each year, a statement of the condition of affairs of the insurer as at the 31st day of December next preceding, which statement shall be in such form as may be prescribed by the Superintendent and shall exhibit the assets, liabilities, receipts and expenditures of the insurer for the calendar year ended on the said date, and shall also exhibit particulars of the business done in Ontario during such year and such other information as is deemed necessary by the Minister or Superintendent from time to time, and such statement shall be verified in the manner prescribed by the Superintendent.

Annual statement.

(2) In the case of an insurer designated by order of the Lieutenant-Governor in Council, the Superintendent may, in lieu of the annual statement required to be filed by all insurers under subsection 1, direct the preparation of a modified statement respecting the business of the insurer in Ontario only.

Modified statement for Dominion licensees.

(3) In the case of a corporation such statement shall be verified by the president, vice-president or managing director, or other director appointed for the purpose by the board of directors, and by the secretary or manager of the corporation.

Who may verify statement.

(4) Every insurer shall when required by the Superintendent make prompt and explicit answer in reply to any inquiry directed to the insurer by him in relation to the statement or in relation to the transactions of the insurer in Ontario.

Prompt reply to inquiries.

(5) In the case of all classes of insurance other than life insurance, and in the case of all insurers, the statement shall show as a liability of the insurer, eighty per cent of the actual portions of unearned premiums on all business in force on the 31st day of December then last past, or eighty per cent of fifty per cent of the premiums written in its policies and received in respect of contracts having one year or less to run and *pro rata* on those for longer periods.

Unearned premiums a liability.

(6) In the case of insurers transacting life insurance the statement shall show as a liability the valuation of outstanding contracts of insurance according to the standard for valuation of policies of life insurance prescribed by section 78, or such higher standard as the insurer may, with the approval of the Superintendent, adopt.

Life insurers.

(7) The statement shall not show as assets the unpaid balances owing by agents or other insurers in respect of business written prior to the 1st day of October in the next preceding calendar year, or bills receivable on account of the

Certain agents' balances, unauthorized securities, etc., must not show as assets.

same, or unpaid capital or premium on subscribed shares of capital stock, or investment in office furnishings or equipment, nor shall such statements include as assets any investments not authorized by any special or general Act to which the insurer is subject.

Valuation of securities.

(8) Every licensed insurer may, in its annual statement or in any valuation of its securities required to be made, value all of its securities, having a fixed term and rate and not in default as to principal or interest, according to the following rule; if purchased at par at the par value; if purchased above or below par on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made; provided the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, and provided the Superintendent shall have full discretion in determining the method of calculating values according to the foregoing rule. R.S.O. 1937, c. 256, s. 73.

Published statements.

75. A statement purporting to show the financial condition of an insurer differing from the financial condition shown by the statement filed with the Superintendent, or a balance sheet or other statement in form differing from the form prescribed by the regulations, shall not be published or circulated, and every insurer publishing such a statement shall be guilty of an offence. R.S.O. 1937, c. 256, s. 74.

Statements that financial standing guaranteed by government prohibited.

76. Every person who represents orally or in writing that the issue of a licence to an insurer or the printing or publication of an annual statement in the report of the Superintendent or in any other publication of the Department or any other circumstance of the supervision or regulation of the business of the insurer by law or the Department is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 75.

REAL ESTATE

Power of insurers as to holding land.

77.—(1) Except in the case of a fraternal society a licensed insurer may acquire and hold absolutely for its own use and benefit such real property as is necessary for the transaction of its business or *bona fide* mortgaged to it by way of security, and such real property as is acquired by it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of the same, but such insurer shall sell any such last-mentioned real property within seven years after it has

been so acquired. R.S.O. 1937, c. 256, s. 76 (1); 1946, c. 42, s. 2.

(2) Except in the case of a fraternal society a licensed insurer may acquire and hold real property in addition to that provided for by subsection 1 and may acquire or hold or construct a building larger than is required for the transaction of its business and may lease any part of such building not so required, upon complying with and subject to the provisions of *The Mortmain and Charitable Uses Act*. Additional real property. Rev. Stat., c. 241.

(3) In the case of a fraternal or mutual benefit society, any licensed society or any branch or lodge thereof may, subject to its constitutions or rules, acquire and hold absolutely for its own use and benefit such real estate as is necessary for the transaction of its business or *bona fide* mortgaged to it by way of security, and when so authorized by the Lieutenant-Governor in Council, may acquire and hold or construct a building larger than is required for the transaction of its business and may lease any part of such building not so required, and may hold such real estate as is acquired by it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of the same; but the society, branch or lodge shall sell any such last-mentioned real estate within seven years after it has been so acquired. Power of licensed fraternal societies as to holding land.

(4) Any such real property which has been held by the insurer for a longer period than seven years without being disposed of shall be forfeited to His Majesty for the use of Ontario, provided that, Forfeiture.

(a) no such forfeiture shall take effect until the expiration of at least six calendar months after notice in writing to the insurer by the Minister of the intention of His Majesty to claim the forfeiture; and

(b) the insurer may, notwithstanding such notice, before the forfeiture is effected, sell or dispose of the property free from liability to forfeiture. R.S.O. 1937, c. 256, s. 76 (2-4).

(5) An insurer licensed for the transaction of life insurance may make such investments to an aggregate amount not exceeding five per cent of its total assets in Canada allowed by the Superintendent, in the purchase of land in Ontario or elsewhere in Canada where the insurer is carrying on business, the improvement thereof, the construction of buildings thereon, and the management and disposal thereof, as are referred to in *The National Housing Act, 1944* (Canada), or any amendments thereto. Life insurance companies, investment of funds in housing projects. 1944-45, c. 46 (Can.).

Licensed
insurers,
investment
in real
estate.

Rev. Stat.,
c. 59.

(6) Except in the case of a fraternal society, a licensed insurer may make such investments in real estate or leaseholds in Ontario and elsewhere in Canada where the insurer is carrying on business, as are referred to in clause *a* of subsection 3 of section 298 of *The Companies Act*. 1949, c. 45, s. 2.

LIFE INSURANCE RESERVES

Standard of
valuation.

78.—(1) The valuation of contracts of life insurance issued by insurers incorporated and licensed under the law of Ontario except contracts of fraternal societies licensed under this Act, shall be based on the British Offices' Life Tables, 1893, O^M (5), and on a rate of interest of three and one-half per cent per annum; provided, however, that any such insurer may, with the approval of the Superintendent, adopt the American Men Ultimate Table of Mortality A^M (5) with interest at three and one-half per cent per annum, for the valuation of contracts issued on and after January 1st, 1929.

Deduction
allowed in
first policy
year.

(2) In computing such valuation a deduction may be allowed from the value of a policy in the first policy year of an amount ascertained in the following manner, namely; in the case of a twenty payment life policy or any other form of policy, except a term policy, the net annual premium upon which is less than the corresponding net annual premium of a twenty payment life policy, the difference between the net annual premium for such policy and the corresponding net premium for a one year term insurance, and in the case of a policy with a net annual premium greater than that of a twenty payment life policy, an amount equal to the deduction allowed in respect of a twenty payment life policy.

Deduction in
subsequent
years.

(3) After the first policy year the deduction allowed by subsection 2 shall be diminished each year by an amount not less than one-ninth of the deduction in the first policy year so that in the tenth year from the date of issue the value of the policy shall not be less than that ascertained in accordance with subsection 1.

Deduction
where less
than ten
annual
premiums.

(4) In case of policies subject to less than ten annual premiums the deduction ascertained as provided in subsection 2 shall, in each year after the first policy year, be reduced by an amount not less than the equal parts thereof required to provide that the value of the policy at the end of the premium paying period shall be not less than that ascertained in accordance with subsection 1.

Contract
must be self-
supporting.

(5) No insurer shall issue any contract of life insurance that shall not appear to be self-supporting upon reasonable assumption as to interest, mortality and expenses.

(6) Where a contract of life insurance provides for accident or sickness insurance benefits the Superintendent may prescribe by regulations the basis for valuing such benefits, but no deduction shall be allowed from the basis so fixed under subsection 2, and in the valuation of the life insurance benefits under such contracts, the amount of the net annual premium upon which the deduction provided for in subsections 1 to 5 is to be based, shall be the net annual premium exclusive of the premium for such accident or sickness benefits. Accident and sickness benefits.

(7) In the case of annuity contracts, whether immediate or deferred, the valuation basis shall be the British Offices' Select Life Annuity Tables, 1893 (male or female according to the sex of the nominee) with interest at three and one-half per cent per annum. Annuity contracts.

(8) Where the contracts of a fraternal society are reinsured by a licensed insurer other than a fraternal society, the reinsurer may, with the approval of the Superintendent, value such contracts on the American Men Ultimate Table of Mortality A^M ⁽⁵⁾ with interest at four per cent per annum. Valuation of fraternal society contracts.
R.S.O. 1937, c. 256, s. 77.

INSURANCE WITH UNLICENSED INSURERS

79. Notwithstanding anything in this Act, any person may insure property situated in Ontario against fire with an unlicensed insurer, and any property insured or to be insured under this section may be inspected and any loss incurred in respect thereof adjusted; provided such insurance is effected outside of Ontario and without any solicitation whatsoever directly or indirectly on the part of the insurer. R.S.O. 1937, c. 256, s. 78. Insurance with unlicensed insurers.

UNDERWRITERS AGENCIES

80.—(1) A policy of insurance shall not be issued through any underwriters agency under its own name for an insurer, unless such insurer is licensed to carry on business in Ontario and shall have obtained from the Superintendent a licence to issue contracts of insurance through such underwriters agency. Licence.

(2) Every policy of insurance issued through any such underwriters agency shall be in a form approved by the Superintendent, and shall bear upon its face the name and address of the insurer in a prominent and conspicuous manner, and the name of the underwriters agency shall not appear on the face of the policy except as a countersignature thereto. Form of policy.

(3) On no other part of the policy shall the name of the underwriters agency appear except that for identification Name on filing back.

purposes the words "issued through the Underwriters Agency" may be printed on the filing back of the policy, following the name of the insurer and in type not larger than half the depth of that used in printing such name.

Evidence of adoption of form of policy by insurer.

(4) Upon an application for a licence under this section every such insurer shall furnish to the Superintendent evidence of its approval and adoption of the form of policy to be issued through the underwriters agency and of the authority of the underwriters agency or its agents to bind the insurer.

Annual return.

(5) Every insurer licensed under this Act carrying on business or issuing any policy of insurance through any such underwriters agency shall file an annual return of the business transacted through the same underwriters agency in a form prescribed by the Superintendent. R.S.O. 1937, c. 256, s. 79.

GENERAL

Trafficking in life insurance policies prohibited.

81. Any person, other than an insurer or its duly authorized agent, who advertises or holds himself out as a purchaser of life insurance policies or of benefits thereunder, or who trafficks or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to himself or any other person, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 80.

Privileged information.

82. Any information, document, record, statement or thing made or disclosed to the Superintendent concerning any person licensed or applying for licence under this Act, shall be absolutely privileged and shall not be used as evidence in any action or proceeding in any court brought by or on behalf of such person. R.S.O. 1937, c. 256, s. 81.

Insurer to file form of policy.

83.—(1) The Superintendent may require an insurer to file with him a copy of any form of policy or of the form of application for any policy issued or used by the insurer.

Prohibition of certain policies.

(2) The Superintendent shall report to the Minister any case where an insurer issues any policy or uses an application which, in the opinion of the Superintendent, is unfair, fraudulent or not in the public interest, and after hearing the insurer the Minister may, if he concurs in the report, order the Superintendent to prohibit the insurer from issuing or using such form of policy or application.

Penalty.

(3) Any insurer which, after being so prohibited, issues any such policy or uses any such application, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 82.

84. Unless the contract otherwise provides, a violation of any criminal or other law in force in the province or elsewhere shall not, *ipso facto*, render unenforceable a claim for indemnity under a contract of insurance except where the violation is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage, provided that in the case of a contract of life insurance this section shall apply only to disability insurance undertaken as part of the contract. 1948, c. 48, s. 1.

Violation of law, effect of, on claim for indemnity.

PENALTIES

85.—(1) Unless otherwise provided every person guilty of any act or omission prohibited or required by this Act shall incur a penalty of not less than \$20 and not more than \$200 for every such offence.

Penalty for offence.

(2) In addition, where an insurer violates the prohibitions or fails to comply with the requirements of this Act, the Lieutenant-Governor in Council may, upon the report of the Superintendent, suspend or cancel the licence of the insurer.

Suspension of licence.

(3) Every insurer undertaking insurance or carrying on business in Ontario without holding a licence to do so, shall incur a penalty of \$50 for each and every day during which the default continues.

Penalties for carrying on business without a licence.

(4) In any prosecution under this Act, whenever it appears that the defendant or the accused has done any act or been guilty of any omission in respect of which he would be liable to some penalty under this Act or the regulations made hereunder unless he had been duly licensed it shall be incumbent upon the defendant or the accused to prove that he is duly licensed.

Burden of proof of licence.

(5) In case of default in making any return required by this Act to be made within a limited time, the insurer or the person required by this Act to make the return shall, in addition to the penalty provided by subsection 1, incur a further penalty of \$100 for every month or part thereof during which such insurer or person neglects to file any return so required.

Penalty for continued default.

(6) Any penalty imposed under this Act shall be recoverable under *The Summary Convictions Act* and when recovered shall be paid over to the Treasurer of Ontario for the use of Ontario. R.S.O. 1937, c. 256, s. 83.

Application of Rev. Stat., c. 379.

FEES AND REGULATIONS

86.—(1) Until otherwise prescribed by the Lieutenant-Governor in Council, the fees or taxes payable to the Depart-

Fees.

ment by an insurer or other person shall be as mentioned in Schedule A.

When payable.

(2) Such fees or taxes shall be paid before a licence or the renewal of a licence is issued.

Regulations.

(3) The Lieutenant-Governor in Council may make regulations,

- (a) altering or amending the scale of fees or taxes provided for in Schedule A;
- (b) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned herein;
- (c) generally for the better administration of the Department or the carrying out of the provisions of this Act. R.S.O. 1937, c. 256, s. 84 (1-3).

PART III

INSURANCE CONTRACTS IN ONTARIO

Application.

87. Except where otherwise provided and where not inconsistent with other provisions of this Act, the provisions of this Part shall apply to every contract of insurance made in Ontario other than contracts of,

- (a) accident and sickness insurance;
- (b) life insurance; and
- (c) marine insurance. 1946, c. 42, s. 4.

Contracts to be deemed made in Ontario.

88. Where the subject matter of a contract of insurance is property in Ontario or an insurable interest of a person resident within Ontario, the contract of insurance, if signed, countersigned, issued or delivered in Ontario or committed to the post office or to any carrier, messenger or agent to be delivered or handed over to the insured, his assign or agent in Ontario, shall be deemed to evidence a contract made therein, and the contract shall be construed according to the law thereof, and all moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the insurer in lawful money of Canada. R.S.O. 1937, c. 256, s. 86.

Terms, etc., of contracts invalid unless set out in full.

89.—(1) All the terms and conditions of the contract of insurance shall be set out in full in the policy or by writing securely attached to it when issued, and unless so set out no term of the contract or condition, stipulation, warranty or

proviso modifying or impairing its effect shall be valid or admissible in evidence to the prejudice of the insured or beneficiary.

(2) Subsection 1 shall not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy. Exception.

(3) Whether the contract does or does not provide for its renewal, but it is renewed by a renewal receipt it shall be a sufficient compliance with subsection 1, if the terms and conditions of the contract were set out as provided by that subsection and the renewal receipt refers to the contract by its number or date. Contents of renewal receipt.

(4) The proposal or application of the insured shall not as against him be deemed a part of or be considered with the contract of insurance except in so far as the court may determine that it contains a material misrepresentation by which the insurer was induced to enter into the contract. What regard to be given to proposal.

(5) No contract of insurance shall contain or have endorsed upon it, or be made subject to, any term, condition, stipulation, warranty or proviso, providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the insurer, unless such term, condition, stipulation, warranty or proviso is and is expressed to be limited to cases in which such statement is material to the contract, and no contract shall be avoided by reason of the inaccuracy of any such statement unless it is material to the contract. Contract not to be invalidated by erroneous statement in application unless material.

(6) The question of materiality in any contract of insurance shall be a question of fact for the jury, or for the court if there is no jury, and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance, or in the instrument of contract, or in any agreement or document relating thereto shall have any force or validity. Materiality, how decided.

(7) This section shall not apply to contracts of fire or automobile insurance. R.S.O. 1937, c. 256, s. 87. Application.

90. Every insurer shall upon request furnish to the insured a true copy of his application or proposal for insurance. R.S.O. 1937, c. 256, s. 88. Copy of proposal to be furnished to insured.

91.—(1) No insurer shall make a contract of insurance inconsistent with this Act. No contract shall be inconsistent with Act.

Rights of insured.

(2) Any act or omission of the insurer resulting in imperfect compliance with any of the provisions of this Act shall not render a contract invalid as against the insured. R.S.O. 1937, c. 256, s. 89.

Contents of policy.

92.—(1) Every policy shall contain the name and address of the insurer, the name, address, occupation or business of the insured, the name of the person to whom the insurance money is payable, the premium for the insurance, the subject matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which such liability is to accrue, and the term of the insurance.

Application of section.

(2) This section shall not apply to contracts of guarantee insurance. R.S.O. 1937, c. 256, s. 90.

Right of claimant against insurer where execution against insured returned unsatisfied.

93.—(1) Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against him in respect of his liability, and an execution against him in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

Exception.

(2) This section shall not apply to motor vehicle liability policies. R.S.O. 1937, c. 256, s. 91.

Consolidation of actions.

94.—(1) Where several actions are brought for the recovery of money payable under a contract or contracts of insurance the court may consolidate or otherwise deal therewith so that there shall be but one action for and in respect of all the claims made in such actions.

Where infants are entitled to insurance money.

(2) Where an action is brought to recover the share of one or more infants all the other infants entitled, or the trustees, executors, or guardians entitled to receive payment of the shares of such other infants, shall be made parties to the action, and the rights of all the infants shall be determined in one action.

Apportionment of sums directed to be paid.

(3) In all actions where several persons are interested in the insurance money the court or judge may apportion among the persons entitled any sum directed to be paid, and may give all necessary directions and relief.

When payee is domiciled or resident abroad.

(4) Where the person entitled to receive money due and payable under any contract of insurance, except insurance of the person, is domiciled or resides in a foreign jurisdiction and

payment, valid according to the law of such jurisdiction, is made to such person, such payment shall be valid and effectual for all purposes. R.S.O. 1937, c. 256, s. 92.

95.—(1) Where the contract of insurance has been delivered it shall be as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

Effect of delivery of policy or receipt for premium.

(2) The insurer may sue for the unpaid premium and may deduct the same from the amount for which he may become liable under the policy or contract of insurance.

Right of insurer in respect of unpaid premium.

(3) Where the premium is paid by a cheque or a promissory note and the cheque is not paid on presentation or the promissory note at maturity the contract shall at the option of the insurer be voidable. R.S.O. 1937, c. 256, s. 93.

Where note or cheque for premium not paid.

96.—(1) Every insurer shall, immediately upon receipt of notice of any claim under a contract of insurance, forward to the insured or person to whom the insurance money is payable printed forms upon which to make the proof of loss required under the contract.

Insurer to furnish forms.

(2) Every insurer who neglects or refuses to comply with the provisions of subsection 1 shall be guilty of an offence. R.S.O. 1937, c. 256, s. 94.

Penalty.

97.—(1) No action shall be brought for the recovery of money payable under a contract of insurance until the expiration of sixty days after proof, in accordance with the provisions of the contract, of the loss or of the happening of the event upon which the insurance money is to become payable or such shorter period as may be prescribed by any enactment regulating the contracts of the insurer or as may be fixed by the contract of insurance.

When action may be brought under contract.

(2) After such sixty days or shorter period, any person entitled as beneficiary or by assignment or other derivative title to the insurance money, and having the right to receive the same and to give an effectual discharge therefor, may sue for the same in his own name, any rule, stipulation or condition to the contrary notwithstanding. R.S.O. 1937, c. 256, s. 95.

Beneficiary, etc., of contract may sue in his own name.

INSURANCE AS COLLATERAL SECURITY

98.—(1) A mortgagee shall not accept or be entitled to receive either directly or through his agent or employee, and no officer or employee of such mortgagee shall accept or receive

Mortgagee not to receive commission from insurer.

any commission or other remuneration or benefit in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to him as mortgagee.

Payment of
commission
prohibited.

(2) No insurer or agent or broker shall pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in his employ or on his behalf, in consideration of effecting a contract of insurance or renewal thereof, under which contract loss, if any, is payable to him as mortgagee.

Offence.

(3) Any insurer or other person who contravenes the provisions of this section shall be guilty of an offence. R.S.O. 1937, c. 256, s. 96.

CONTRACTS OF GUARANTEE INSURANCE

Contracts
of title
insurance.

99.—(1) Every contract of title insurance shall be in writing, and in addition to the other requirements prescribed by this Act shall expressly limit the liability of the insurer to a sum stated in the contract.

Questions as
to validity
of title.

(2) If any question arises as to the validity of the title insured, or as to the liability of the insurer, the insurer or the insured or any person entitled to proceed in right of either may by application have such question determined as provided in *The Vendors and Purchasers Act* in the case of vendors and purchasers. R.S.O. 1937, c. 256, s. 97.

Rev. Stat.,
c. 407.

RESIDENT AGENT

Licensed
agent to sign
contract.

100.—(1) No licensed insurer shall undertake any contract of fire insurance upon real or personal property situate in Ontario or described in any contract as situate in Ontario, except after the contract, completed in accordance with section 107, has been signed or countersigned by a licensed agent who is a resident of Ontario and who is to receive the commission or some part thereof when the premium stipulated in the contract is paid.

Exception
as to insur-
ance through
agent in
foreign
jurisdiction.

(2) This section shall not apply to any such contract undertaken through an agent resident in any foreign jurisdiction wherein a contract of fire insurance on property situate or described as situate in such jurisdiction is not, if made in Ontario, required to be approved, signed or countersigned by an agent resident in such foreign jurisdiction, or to any such contract covering rolling stock of a railroad corporation or property in transit which is in the possession or custody of a

railroad corporation or other common carrier or to moveable property of any such common carrier used or employed in the business of a common carrier.

(3) In this section, "insurer" shall be deemed to include only a joint stock insurance company, cash-mutual insurance corporation and any insurance company described in clause f of subsection 1 of section 23. R.S.O. 1937, c. 256, s. 98.

Interpre-
tation.

GENERAL

101. Any licensed insurer which discriminates unfairly between risks within Ontario because of the race or religion of the insured shall be guilty of an offence. R.S.O. 1937, c. 256, s. 99.

No racial
or religious
discrimina-
tion per-
missible.

102.—(1) Where an insurer cannot obtain a sufficient discharge for insurance money for which it admits liability, the insurer may apply to the court *ex parte* for an order for the payment thereof into court, and the court may order the payment into court to be made upon such terms as to costs and otherwise as the court directs, and may provide to what fund or name the amount shall be credited.

Payment
into court.

(2) The receipt of the registrar or other proper officer of the court shall be sufficient discharge to the insurer for the insurance money so paid into court, and the insurance money shall be dealt with according to the orders of the court. R.S.O. 1937, c. 256, s. 100.

Discharge to
insurer.

PART IV

FIRE INSURANCE

103. In this Part, unless the context otherwise requires,

Interpre-
tation.

1. "agricultural property" includes dwelling-houses, stables, barns, sheds and outbuildings, and their contents, wagons, carriages, and other vehicles, saddles and harness, agricultural engines, implements, tools, instruments, appliances and machinery, household goods, wearing apparel, provisions, musical instruments, and libraries, livestock, growing crops, and crops severed from the land, fruit and ornamental trees, shrubs and plants, and live or standing timber, being upon farms as farm property, and owned by members of the insurer in which the property is insured;

2. "contract" means a contract of insurance against loss of or damage to property in Ontario or in transit therefrom or thereto, caused by fire, lightning or explosion, and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
3. "property" includes use and occupancy, rents, profits and charges where these are the subject matter of the insurance. R.S.O. 1937, c. 256, s. 101.

Application
of Part.

104.—(1) This Part shall apply to fire insurance and to any insurer carrying on the business of fire insurance in Ontario.

Automobiles.

(2) This Part shall not apply to the insurance of automobiles against loss or damage by fire except when they are insured as provided in subsection 2 of section 105. R.S.O. 1937, c. 256, s. 102.

What rights
may be
insured
against.

105.—(1) Every insurer licensed for the transaction of fire insurance may, within the limits and subject to the restrictions prescribed by the licence, insure or reinsure any property in which the insured has an insurable interest against damage or loss by fire, lightning or explosion, whether the same happens by accident or by any other means except that of design on the part of the insured.

Insurance of
automobiles.

(2) An insurer licensed under this Act for the transaction of fire insurance may insure an automobile against loss or damage by fire under a fire insurance policy; provided that in the case of a purely mutual fire insurance corporation, incorporated or licensed in Ontario and carrying on business on the premium note plan, such automobile shall be specifically insured under a policy separate from that insuring other property. R.S.O. 1937, c. 256, s. 103 (1, 3).

Renewal of
contract.

106. A contract may be renewed by the delivery of a renewal receipt, identifying the policy by number, date or otherwise, or a new premium note. 1939, c. 22, s. 1.

Contents of
policy.

107. Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the premium or other consideration for the insurance, the subject matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which such liability is to accrue and the term of the insurance. R.S.O. 1937, c. 256, s. 105.

108.—(1) The conditions set forth in this section shall be deemed to be part of every contract in force in Ontario, except contracts where the subject matter of the insurance is exclusively rents, charges or loss of profits and shall be printed on every policy with the heading "Statutory Conditions" and subject to section 113, no variation, omission or addition thereto shall be binding on the insured, nor shall anything contained in the description of the subject matter of the insurance be effective in so far as it is inconsistent with, varies, modifies or avoids any such condition.

(2) Where the subject matter of the insurance is exclusively rents, charges or loss of profits, the conditions set forth in this section shall not be required to be part of any such contract or to be printed therein. R.S.O. 1937, c. 256, s. 106.

STATUTORY CONDITIONS

Misrepresentation

1. If any person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance which is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract shall be void as to the property in respect of which the misrepresentation or omission is made.

Form of Contract

2. After application for insurance, if the same is in writing, it shall be deemed that any policy sent to the insured is intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy.

Property Not Insured

3. Unless otherwise specifically stated in the policy, money, books of account, securities for money, evidences of debt or title, and automobiles, tractors and other motor vehicles, are not insured.

Risks Not Covered

4. Unless otherwise specifically stated in the policy, the insurer is not liable for the losses following, that is to say:

- (a) for loss of or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the policy;
- (b) for loss or damage caused by invasion, insurrection, riot, civil commotion, military or usurped power;
- (c) for loss due to the want, within the knowledge of the insured, of good and substantial chimneys; or caused by ashes or embers being deposited, with the knowledge and consent of the insured, in wooden vessels; or by stoves or stove-pipes being, to the knowledge of the insured, in an unsafe condition or improperly secured; or
- (d) for loss of or damage to goods while undergoing any process in or by which the application of fire heat is necessary.

Risks Not Covered Except by Special Permission

5. Unless permission is given by the policy or endorsed thereon, the insurer shall not be liable for loss or damage occurring:

Repairs

- (a) to buildings or their contents during alteration or repair of the buildings and in consequence thereof;

fifteen days being allowed in each year for incidental alterations or repairs without such permission;

**Inflammable
Substances**

(b) while illuminating gas or vapour is generated by the insured, or to his knowledge, in the building insured or which contains the property insured, or while there is stored or kept therein by the insured, or to his knowledge, by any person under his control, petroleum or any liquid product thereof, coal oil, camphene, gasoline, burning fluid, benzine, naphtha, or any of their constituent parts (refined oil for lighting, heating or cooking purposes only, not exceeding five gallons in quantity, gasoline, if contained in a tightly closed metallic can free from leaks and not exceeding one quart in quantity, or lubricating oil not being crude petroleum nor oil of less specific gravity than is required by law for illuminating purposes, not exceeding five gallons in quantity, excepted), or more than twenty-five pounds weight of gunpowder, dynamite or similar explosives;

**Change of
Interest**

(c) after the interest of the insured in the subject-matter of the insurance is assigned, but this condition is not to apply to an authorized assignment under the *Bankruptcy Act* or to change of title by succession, by operation of law, or by death;

Vacancy

(d) when the building insured or containing the property insured is, to the knowledge of the insured, vacant or unoccupied for more than thirty consecutive days, or being a manufacturing establishment, ceases to be operated and continues out of operation for more than thirty consecutive days.

**Explosion and
Lightning**

6. The insurer will make good loss or damage caused by lightning or by the explosion of coal or natural gas in a building not forming part of gas works, whether fire ensues therefrom or not; and loss or damage by fire caused by any other explosion; but, if electrical appliances or devices are insured, any loss or damage to them caused by lightning or other electrical currents is excluded and the insurer shall be liable only for such loss or damage to them as may occur from fire originating outside the article itself.

**Material
Change**

7. Any change material to the risk and within the control and knowledge of the insured shall avoid the policy as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the policy, or may notify the insured in writing that, if he desires the policy to continue in force, he must within fifteen days of the receipt of the notice pay to the insurer an additional premium, and in default of such payment the policy shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

**Other
Insurance**

- 8.—(a) If the insured has at the date of this policy any other insurance on property covered thereby which is not disclosed to the insurer, or hereafter effects any other insurance thereon without the written assent of the insurer, he shall not be entitled to recover more than sixty per cent of the loss in respect of such property; but if for any fraudulent purpose the insured does not disclose such other insurance, this policy shall be void.
- (b) The insurer shall be deemed to have assented to such other insurance unless it dissents by notice in writing within two weeks after notice thereof.
- (c) In the event of there being any other insurance on property herein described at the time of the happening of a loss in respect thereof, the insurer shall be liable only for payment of a rateable

proportion of the loss or a rateable proportion of such amounts as the insurer shall be entitled to recover under clause *a* of this condition.

Mortgagees and Other Payees

9. Where the loss, if any, under a policy has, with the consent of the insurer, been made payable to some person other than the insured, the policy shall not be cancelled or altered by the insurer to the prejudice of such person without reasonable notice to him.

Termination of Insurance

10.—(1) The insurance may be terminated:

- (a) subject to the provisions of condition 9, by the insurer giving to the insured at any time fifteen days notice of cancellation by registered mail, or five days notice of cancellation personally delivered, and, if the insurance is on the cash plan, refunding the excess of premium actually paid by the insured beyond the *pro rata* premium for the expired time;
- (b) if on the cash plan, by the insured giving written notice of termination to the insurer, in which case the insurer shall upon surrender of this policy, refund the excess of premium actually paid by the insured beyond the customary short rate for the expired time.

(2) Repayment of the excess premium may be made by money, post office order or postal note or by cheque payable at par and certified by a chartered bank doing business in the Province. If the notice is given by registered letter, such repayment shall accompany the notice, and in such case the fifteen days mentioned in clause *a* of this condition shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

Salvage

11. After any loss or damage to insured property, it shall be the duty of the insured, when and as soon as practicable, to secure the insured property from further damage, and to separate as far as reasonably may be the damaged from the undamaged property, and to notify the insurer of the separation.

Insurance on Goods Moved

12. If any of the insured property is necessarily removed to prevent damage or further damage thereto, that part of the insurance under this policy which exceeds the amount of the insurer's liability for any loss already incurred shall for seven days only, or for the unexpired term if less than seven days, cover the property removed and any property remaining in the original location in the proportions which the value of the property in the respective locations bears to the value of the property in them all, and the insurer will contribute *pro rata* towards any loss or expense connected with such act of salvage, according to the respective interests of the parties.

Entry, Control, Abandonment

13. After any loss or damage to insured property, the insurer shall have an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisalment or particular estimate of the loss or damage, but the insurer shall not be entitled to the control or possession of the insured property, or the remains or salvage thereof, unless it accepts a part thereof at its agreed value or its value as ascertained according to conditions 17 or undertakes replacement under condition 19, and without the consent of the insurer there can be no abandonment to it of insured property.

Who to Make Proof of Loss

14. Proof of loss must be made by the insured, although the loss is payable to a third person, except that, in case of the absence of the insured, or his inability to make the same, proof may be made by his agent, such absence or inability being satisfactorily accounted for, or in the like case or if the insured refuse to do so, by a person to whom any part of the insurance money is payable.

**Requirements
After Loss**

- 15.** Any person entitled to claim under this policy shall:
- (a) forthwith after loss give notice in writing to the insurer;
 - (b) deliver, as soon thereafter as practicable, a particular account of the loss;
 - (c) furnish therewith a statutory declaration declaring:
 - (i) that the account is just and true;
 - (ii) when and how the loss occurred, and if caused by fire, how the fire originated, so far as the declarant knows or believes;
 - (iii) that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured;
 - (iv) the amount of other insurances and names of other insurers;
 - (v) all liens and encumbrances on the property insured;
 - (vi) the place where the property insured, if moveable, was deposited at the time of the fire;
 - (d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other policy. The evidence furnished under this clause shall not be considered proofs of loss within the meaning of conditions 18 and 19.

Fraud

16. Any fraud or wilfully false statement in a statutory declaration, in relation to any of the above particulars, shall vitiate the claim of the person making the declaration.

Arbitration

17. If any difference arises as to the value of the property insured, the property saved, or the amount of the loss, such value and amount and the proportion thereof, if any, to be paid by the insurer shall, whether the right to recover on the policy is disputed or not, and independently of all other questions, be submitted to the arbitration of some person to be chosen by both parties, or if they cannot agree on one person, then to two persons, one to be chosen by the insured and the other by the insurer, and a third to be appointed by the persons so chosen, or on their failing to agree, then by a judge of the county or district court of the county or district in which the loss has happened; and such reference shall be subject to the provision of *The Arbitration Act*; and the award shall, if the insurer is in other respects liable, be conclusive as to the amount of the loss and the proportion to be paid by the insurer; where the full amount of the claim is awarded the costs shall follow the event; and in other cases all questions of costs shall be in the discretion of the arbitrators.

**When Loss
Payable**

18. The loss shall be payable within sixty days after completion of the proofs of loss, unless the contract provides for a shorter period.

Replacement

19. The insurer, instead of making payment, may repair, rebuild or replace the property damaged or lost, giving written notice of its intention so to do within fifteen days after receipt of the proofs of loss. In such event the insurer shall commence to so repair, rebuild or replace the property within thirty days after receipt of the proofs of loss and shall thereafter proceed with all due diligence to the completion thereof.

Action

20. Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this policy shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

Agency 21. Any officer or agent of the insurer who assumes on behalf of the insurer to enter into a written agreement relating to any matter connected with the insurance shall be deemed *prima facie* to be the agent of the insurer for the purpose.

Waiver of Condition 22. No condition of this policy shall be deemed to have been waived by the insurer, either in whole or in part, unless the waiver is clearly expressed in writing signed by an agent of the insurer.

Notice 23. Any written notice to the insurer may be delivered at or sent by registered post to the chief agency or head office of the insurer in the Province or delivered or so sent to any authorized agent of the insurer therein. Written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the insurer, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

Subrogation 24. The insurer may require from the insured an assignment of all right of recovery against any other party for loss or damage to the extent that payment therefor is made by the insurer.

R.S.O. 1937, c. 256, s. 106, *cons.*

109.—(1) A policy may contain a co-insurance clause, in which case it shall have printed or stamped upon its face in conspicuous type and in red ink the words "This policy contains a co-insurance clause", and unless those words are so printed or stamped such clause shall not be binding upon the insured, and such clause shall not be deemed a variation or addition to the statutory conditions. R.S.O. 1937, c. 256, s. 107 (1). Co-insurance clause.

(2) A policy may contain a limitation of liability clause, or clauses, Limitation of liability clauses.

(a) to the effect that the insurer shall only be liable for a specified proportion of any loss which may be sustained to any of the property covered by the policy; or

(b) to the effect that the insurer shall not be liable for more than a specified percentage of the value of any of the said property at the time of the loss; or

(c) in the event of there being any other insurance covering any of the property, to the effect,

(i) that the insurer shall only be liable for a rateable proportion of a specified percentage or proportion of any loss to any of the property, or

(ii) that the insurer shall not be liable for more than a rateable proportion of a specified percentage of the value of any of the property at the time of the loss; or

- (d) to the effect that the insurer shall only be liable for a specified percentage of any loss, or in the event of there being other insurance covering any of the property, for a specified percentage of its rateable proportion of any loss, but upon the fulfillment by the insured of certain specified stipulations or agreements, shall be liable for a further specified percentage of the loss, or in the event of there being other insurance covering any of the property, for a further specified percentage of its rateable percentage of the loss, but no such stipulation or agreement shall be binding upon the insured unless it is clearly set forth in a written application for the insurance signed by the applicant,

and every policy which contains any clause to the above effect shall have printed or stamped on the face of it, in conspicuous type and in red ink, the following words: "This policy contains a limitation of liability clause, or clauses", and no such clause shall be deemed to be a variation of any statutory condition. R.S.O. 1937, c. 256, s. 107 (2); 1940, c. 11, s. 4.

Rateable contribution excluded only by consent.

110.—(1) If at the time of the happening of any loss or damage by fire to property insured there is in force more than one policy taken by and in the name of the insured, insuring the property against loss or damage caused by the peril of fire, no term of any such policy which excludes the insurer from contributing a rateable proportion of the loss with an insurer under any such other policy shall be valid unless the insurer under such other policy has expressly assented in writing to such term.

Effect of policy may not be postponed.

(2) For the purpose of subsection 1, a policy shall be deemed to be in force notwithstanding any term thereof that the policy shall not cover, come into force, attach or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

Certain restrictions valid.

(3) Nothing in subsection 1 shall affect the validity of any divisions of the sum insured into separate items, or any limits of insurance on specific property, or a co-insurance clause, or a limitation of liability clause authorized under section 109, or the provision of statutory condition 8 set forth in section 108 respecting undisclosed insurance.

Insurance on identified articles.

(4) Notwithstanding subsection 1, insurance on identified articles shall be a first loss insurance as against all other insurance.

(5) This section shall, in respect to the peril of fire, apply to all policies of all classes of insurance except aircraft, automobile, boiler and machinery, livestock and marine insurance. 1943, c. 28, s. 19. Application of section.

111. No red ink shall be used on a policy except for the name, address and emblem of the insurer, the policy number and for the purposes mentioned in this Act. R.S.O. 1937, c. 256, s. 108. Use of red ink.

112. In any case where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as may seem just. R.S.O. 1937, c. 256, s. 109. Relief from forfeiture.

113. Where the rate of premium is affected or modified by the user, condition, location, or maintenance of the insured property, the policy may contain a clause not inconsistent with any statutory condition setting forth any stipulation in respect of such user, condition, location or maintenance, and such clause shall not be deemed a variation of any statutory condition, and such clause shall be binding on the insured only in so far as it is held by the court before which a question relating thereto is tried to be just and reasonable. R.S.O. 1937, c. 256, s. 110. Special stipulations.

PREMIUM NOTES AND ASSESSMENTS

114.—(1) Sections 115 to 130 shall apply only to mutual and cash mutual fire insurance corporations and, saving sections 116, 117 and 126 to mutual livestock and mutual weather insurance corporations which carry on business on the premium note plan. Application of sections 115 to 130.

(2) No licensed insurer shall carry on, on the premium note plan, any class of insurance other than fire, livestock and weather insurance. Insurance on premium note plan.

(3) Sections 115 to 130 shall apply only to contracts made in Ontario. R.S.O. 1937, c. 256, s. 111. Application of ss. 115 to 130.

115.—(1) The insurer may accept the premium note of the insured for insurance and may undertake contracts in consideration thereof and such notes shall be subject to cash payments and assessments for the losses, expenses and reserve of the insurer in the manner hereinafter provided. Insurer may accept premium notes.

Form of
note.

(2) The premium note shall be in the form prescribed by Schedule B to this Act.

Premium
note.

(3) Nothing but the notice provided by section 127 shall be written upon the same paper upon which the premium note is written, and a violation of this section shall render the premium note void. R.S.O. 1937, c. 256, s. 112.

Minimum
rates.

116. The rate to be charged or taken by way of premium note for insuring agricultural property, other than brick, stone or concrete dwellings, shall be not less than \$3 for three years for every one hundred dollars of insurance, and the minimum rate upon other property may be increased or decreased relatively with the risk according to the nature of the property. R.S.O. 1937, c. 256, s. 113.

Minimum
cash
payment.

117.—(1) Subject to subsection 3, the directors shall require at the time of the application for insurance of agricultural property other than brick, stone or concrete dwellings, a cash payment on the premium note of not less than eighty cents for three years for every one hundred dollars of insurance and may require a larger or smaller cash payment at the time of the application for the insurance of other property; provided, that not more than sixty per cent of any premium note shall be paid in cash at the time of the application for or of effecting the insurance.

Reduction
of, by
directors.

(2) The cash payment required at the time of the application for insurance of agricultural property, other than brick, stone or concrete dwellings, may be reduced with the approval of the Superintendent by the directors when and so long as the surplus of the insurer is not less than twenty-five cents for every one hundred dollars of the total net amount at risk.

Payment
by annual
instalments.

(3) Instead of requiring the cash payment to be paid in full at the time of the application for insurance, the directors may make the cash payment payable in three equal annual instalments of not less than thirty cents each for every one hundred dollars of insurance on agricultural property other than brick, stone or concrete dwellings, and *pro rata* on other property; the first of which shall be due and payable at the time of the application for insurance and the remaining instalments shall be respectively due and payable on the first day of each subsequent year of the term of insurance.

Interpre-
tation.

(4) In this section, "surplus" means the assets of the insurer other than the premium note residue after deducting therefrom all liabilities of the insurer (other than contingent liabilities on unmatured contracts) and the proportion of cash payments and instalments thereof paid in advance applicable to unex-

pired policy contracts calculated as required by subsection 5 of section 74. R.S.O. 1937, c. 256, s. 114 (1-4).

(5) The directors may declare a refund from surplus ^{Refund from surplus.} provided that,

- (a) on the effective date of the refund the net surplus of the insurer after deducting the total amount of the refund shall, in terms of cents per hundred dollars of net insurance in force, be not less than the amount set out in the following table, or, in the case of an insurer with less than two million dollars of net insurance in force, such other amount as shall be approved by the Superintendent;
- (b) except as hereinafter provided, the refund shall apply on all policies in force on the effective date thereof;
- (c) the refund on each policy shall be in the same ratio to the total refund as the face value of the premium note is to the total face value of all premium notes in force at date of refund, or, that the refund on each policy shall be a fixed percentage of the annual instalment or of one-third of the cash payment for three years in advance, as the case may be; and
- (d) the by-laws of the insurer require that refunds shall be payable only to members insured continuously in the insurer during the three years preceding the effective date of the refund.

TABLE

When the total net amount at risk is greater than \$25,000,000—	\$0.60
When the total net amount at risk is greater than 10,000,000—	.70
When the total net amount at risk is greater than 5,000,000—	.80
When the total net amount at risk is greater than 2,000,000—	1.00

1944, c. 58, s. 5 (1).

(6) Subsection 5 shall not apply to cash-mutual fire insurance corporations, or to an insurer the surplus of which as defined by subsection 4, exceeds ten per cent of the total amount at risk. R.S.O. 1937, c. 256, s. 114 (6). ^{Application of subs. 5.}

(7) Subject to the exceptions in subsection 6, subsection 5 shall apply to any distribution of surplus to members other than a distribution for the purposes of winding-up or re-insurance of the insurer. 1944, c. 58, s. 5 (2). ^{Where subs. 5 to apply.}

118.—(1) No insurer shall make a contract on the premium note plan covering agricultural property, for a term exceeding twelve months, without a written application ^{Written application required.}

therefor signed by the applicant, or, in case of the absence of the applicant or his inability to make the application, by his agent other than the agent of the insurer, or by a person having an insurable interest in the property.

Contents of application.

(2) Every written application shall set forth the name, address and occupation of the applicant, the description, location and occupancy of the property to be insured, its value, particulars of any mortgage, lien or other encumbrance thereon, the purpose for which and the location in which any moveable property is deposited or used, particulars of any claims made by the applicant in respect of insured loss or damage by fire, whether any insurer has cancelled any fire insurance policy of, or refused fire insurance to the applicant, particulars of any other fire insurance on the same property, and such other information as the insurer or the Superintendent may require. R.S.O. 1937, c. 256, s. 115.

Assessments.

119.—(1) The cash payment or instalments thereof required to be paid by section 117 at the time of the application for insurance shall be applied in part payment of the premium note, and the premium note residue shall be subject to assessments by the directors, with the approval of the Superintendent, in such sums and at such times as they may determine for reserve and for losses and expenses incurred during the currency of the policies for which such notes were given.

When due.

(2) Every assessment shall be due and payable within thirty days after notice stating the amount and date of the assessment has been given in the manner hereinafter provided.

How fixed.

(3) An assessment shall be fixed as a percentage of the face amount of the premium note, and all assessments shall be payable on the same date and at the same rate per cent. R.S.O. 1937, c. 256, s. 116.

Penalty for default in payments.

120.—(1) Default in making the cash payment or any instalment thereof within thirty days after notice of it becoming due, or of its non-payment when due, has been given in the manner hereinafter provided, or default in paying any assessment authorized by the directors within thirty days after notice has been given as required by subsection 2 of section 119, shall, unless the directors determine otherwise, render the contract of insurance null and void as to all claims for loss occurring during the time of default; but subject thereto the contract shall be revived if and when the cash payment or instalments thereof or the assessment so in default has been paid.

(2) Nothing herein contained shall relieve the insured of his liability to pay the cash payment and all assessments lawfully imposed by the directors during the full term of the policy or within forty days thereafter in respect of which the prescribed notice has been given, or prejudice the right of the insurer after giving the required notice to sue for and recover the same with the costs of the suit. Liability of insured.

(3) Where an action is brought to recover an assessment the certificate of the secretary of the insurer specifying the assessment and the amount due on the note in respect of such assessment shall be *prima facie* evidence thereof in any court. Evidence of amount due insurer.
R.S.O. 1937, c. 256, s. 117.

121.—(1) The notices required to be given by sections 119 and 120 shall be sufficient if mailed to the person by whom the cash payment, or any instalment thereof, or the assessment as the case may be, is payable, addressed to his post office address given in the original application, or otherwise given in writing, to the insurer, and if it states the register number of the contract, the time when, and the place where, the amount is payable. Notice.

(2) Subsection 1 of section 120 shall be printed in full upon the face of all such notices. Notice to contain s. 120, subs. 1.

(3) If the property insured has been mortgaged and the insurer has assented to the mortgage the notices respecting assessments and cash payments herein required to be mailed to the payee shall also be mailed to the mortgagee if his post office address is known to the insurer, and if notice is not so given the contract shall be deemed to be valid and subsisting as to the interest of the mortgagee. Notice to mortgagee.
R.S.O. 1937, c. 256, s. 118.

122. Forty days after the expiration of the term of insurance or after the insured has sustained a total loss in respect of the property insured the premium note given for the term shall be null and void except as to the cash payment or instalments thereof remaining unpaid and as to lawful assessments of which the prescribed written notice has been given to the maker of the premium note during the currency of the policy or within such period of forty days, and on the expiration of such period the premium note shall upon application therefor be surrendered to the maker, provided all liabilities with which the premium note is chargeable have been paid. Return of premium note on termination of insurance.
R.S.O. 1937, c. 256, s. 119.

Assessments
may be
retained out
of insurance
money.

123. If there is a loss on property insured the directors may retain out of the insurance money the cash payment or any instalments thereof, or any lawful assessment due and payable and remaining unpaid by the insured. R.S.O. 1937, c. 256, s. 120.

Reinsurance.

124. The directors may reinsure any risk undertaken on the premium note plan with any other insurer of the same class, and may authorize the execution of a premium note by the proper officer of the insurer, and the insurer shall in respect of such reinsurance contract have the same rights and be subject to the same obligations as a member of the reinsurer. R.S.O. 1937, c. 256, s. 121.

General
reinsurance
agreement.

125.—(1) Subject to the approval of the Superintendent, the directors of any insurer licensed to transact insurance on the premium note plan may enter into a general reinsurance agreement with any other insurer of the same class for the reinsurance of risks on such terms and conditions as may be agreed upon.

Policies
and notes
unnecessary.

(2) The agreement authorized by subsection 1 may dispense with the issue of policies and the execution of premium notes and may provide for reinsurance on the cash plan.

Writing
and seals.

(3) Every such agreement shall be in writing and under the corporate seals of the parties thereto. R.S.O. 1937, c. 256, s. 122.

Compulsory
reinsurance.

126.—(1) No insurer shall undertake any risk on the premium note plan which is subject to the hazard of a single fire for an amount greater than that allowed by the following table unless such risk is reinsured to an amount sufficient to reduce the net liability of the insurer to the amount authorized in such table:

TABLE

When the total amount at risk is less than \$4,000,000	\$3,000
When the total amount at risk is less than 5,000,000	4,000
When the total amount at risk is more than 5,000,000	5,000

Meaning
of risk
subject to
hazard of
single fire.

(2) A risk subject to the hazard of a single fire shall be deemed to include, in the case of agricultural property, other than brick, stone or concrete dwellings, the total amount at risk on barns, outbuildings, contents, machinery, and all other items in connection therewith except livestock or a dwelling distant more than 80 feet from any other insured farm building, and in all other cases the total amount at risk on buildings or their contents where such buildings are distant less than 80 feet from each other.

(3) Where an insurer fails to reinsure any risk which is subject to the hazard of a single fire and for an amount greater than that allowed by the table set out in subsection 1, the Minister, on the report of the Superintendent, may suspend or cancel the licence of the insurer. Penalty for failure to reinsure.

(4) Nothing in this section shall render a contract invalid as against the insured. Rights of insured.

(5) This section shall not apply to an insurer which is restricted by its licence to the insurance against fire and lightning of buildings, plant and stock of millers and grain dealers used in connection with the grain trade and the dwellings, outbuildings and contents thereof owned by such millers and grain dealers or their employees when and so long as its surplus as defined by subsection 4 of section 117 exceeds ten per cent of the total amount at risk. R.S.O. 1937, c. 256, s. 123. Exception.

127. Any action upon any premium note or for an assessment thereon cognizable in a division court may be entered, tried and determined in the court for the division wherein the head office or any agency of the insurer is located, where and where only within the body of such note, or across the face thereof, there was at the time of the making of it printed in conspicuous type, or in ink of a colour different from any other in or on such note, the words following: "Any action which may be brought or commenced in a division court in respect or on account of this note, or any sum to be assessed thereon may be brought and commenced against the maker hereof in the division court for the division wherein the head office or any agency of the insurer is located." R.S.O. 1937, c. 256, s. 124. Actions in division court where brought.

128. No premium note shall create a lien upon the land on which the insured property is situate. R.S.O. 1937, c. 256, s. 125. Note not to be a lien on land.

129.—(1) An insurer licensed to transact cash-mutual fire insurance may effect insurance upon the cash plan, but the amount of premiums received on cash insurances in any one calendar year shall not exceed four times the amount which the insurer has then on deposit with the Minister. R.S.O. 1937, c. 256, s. 126 (1); 1947, c. 51, s. 2. Powers of incorporated insurers to insure on the cash principle.

(2) If at any time the amount of such premiums exceeds the amount authorized by subsection 1 the insurer shall at once increase its deposit to an amount sufficient to warrant the excess, and in default the Minister may suspend or cancel its licence. When deposit must be increased.

What funds
liable for
losses.

(3) All the property and assets of the insurer, including premium notes, shall be liable for all losses under contracts of insurance for cash premiums. R.S.O. 1937, c. 256, s. 126 (2, 3).

When
execution
upon judg-
ment against
insurer.

130.—(1) No execution shall issue against a mutual or cash-mutual insurer upon a judgment until after the expiration of sixty days from the recovery thereof, but this section shall not apply to a judgment recovered on a contract of insurance where more than sixty per cent of the premium, or premium note, was paid in cash at the time of the insurance or the application therefor.

When order
may be
made for
issue.

(2) A judge of the Supreme Court or the master in chambers, after the recovery of a judgment against the insurer, upon the application of the judgment creditor and upon notice to the insurer, may inquire into the facts, and if he finds that more than sixty per cent of the premium note was paid in cash at the time of the insurance, or upon the application therefor, he may direct that execution be issued forthwith upon such judgment. R.S.O. 1937, c. 256, s. 127.

PART V

LIFE INSURANCE

Interpre-
tation.

131. In this Part, unless the context otherwise requires,

1. "adopted child" means a person who has been adopted by another person as his child and by reason thereof is entitled under the law of the place of adoption to inherit real property from that other person, if he dies intestate;
2. "adopting parent" means a person who has adopted another person as his child and by reason thereof is entitled under the law of the place of adoption to inherit real property from that other person, if he dies intestate;
3. "beneficiary" means a person designated or appointed as one to whom or for whose benefit insurance money is to be payable;
4. "child" and "issue" include an adopted child;
5. "contract", "contract of insurance" and "contract of life insurance" mean a contract of life insurance and include any other contract which an insurer may issue under the authority of a licence to transact life insurance;

6. "court" means the Supreme Court or a judge thereof; R.S.O. 1937, c. 256, s. 128, pars. 1-6.
7. "creditor's group life insurance" means life insurance effected by a creditor on the lives of his debtors whereby the lives of the debtors are insured severally under a single contract; 1948, c. 48, s. 2 (1), *part*.
8. "declaration" means an instrument in writing signed by the insured, attached to or endorsed on a policy, or an instrument in writing, signed by the insured in any way identifying the policy or describing the subject of the declaration as the insurance or insurance fund or a part thereof or as the policy or policies of the insured or using language of like import, by which the insured designates or appoints a beneficiary or beneficiaries, or alters or revokes the designation or appointment of a beneficiary or beneficiaries, or apportions or reapportions, or appropriates or reappropriates, insurance money between or among beneficiaries;
9. "foreign jurisdiction" means any jurisdiction other than the Province; R.S.O. 1937, c. 256, s. 128, pars. 7, 8.
10. "fraternal society" means a society, order or association incorporated for the purpose of making with its members only and not for profit contracts of life, accident or sickness insurance under which benefits may be paid only to its members or their beneficiaries, in accordance with its constitution and laws and the provisions of this Act; R.S.O. 1937, c. 256, s. 128, par. 9; 1949, c. 45, s. 3.
11. "group life insurance" means life insurance, other than creditor's group life insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person contracting with the insurer; 1948, c. 48, s. 2 (1), *part*.
12. "instrument in writing" includes a last will;
13. "insurance" means life insurance;
14. "insurance money" includes all insurance money, benefits, surplus, profits, dividends, bonuses and annuities payable by an insurer under a contract of insurance; R.S.O. 1937, c. 256, s. 128, pars. 10-12.

15. "insured" means the person who makes a contract with an insurer; 1948, c. 48, s. 2 (2).
16. "insurer" includes any corporation, or any society or association, incorporated or unincorporated, any fraternal society or any person or partnership, or any underwriter or group of underwriters, that undertakes or effects, or agrees or offers to undertake or effect, a contract of insurance;
17. "judge" means a judge of the Court;
18. "parent", "father" and "mother" include an adopting parent of the same sex respectively;
19. "person" includes firm, partnership, corporation and unincorporated society or association;
20. "premium" means the single or periodical payment to be made for the insurance, and includes dues and assessments; R.S.O. 1937, c. 256, s. 128, pars. 13-18.
21. "will" includes a codicil. 1946, c. 42, s. 5.

Application.

132.—(1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part shall apply to every contract of life insurance made in the Province after the 1st day of January, 1925, and any term in any such contract inconsistent with this Part shall be null and void.

(2) This Part shall apply to every contract of life insurance made in the Province before the 1st day of January, 1925, where the maturity of the contract had not occurred before that date.

(3) This Part shall apply to every other contract of life insurance made after the 1st day of January, 1925, where the contract provides that this Part shall apply or that the contract shall be construed or governed by the law of the Province.

(4) Where this Part applies to any contract, the rights and status of beneficiaries and the powers of the insured with regard to the designation or appointment of beneficiaries and the apportionment of the insurance money shall be governed by this Part, whether or not the insured or any of the beneficiaries is domiciled in the Province at the time at which the contract is made, or at any time subsequent thereto. R.S.O. 1937, c. 256, s. 129.

(5) This section does not apply to a contract of group life insurance. 1948, c. 48, s. 3.

Exception as
to applica-
tion of
section.

133. In the case of a contract of group life insurance, Law applicable in case of group life insurance. whether made before or after the 30th day of June, 1948,

(a) the law of the place where the contract was made shall —apply between the insurer and the insured;

(b) the law of the place where the person whose life is insured was resident at the time his life became insured shall apply in determining the rights and status of beneficiaries and the rights and obligations of the person whose life is insured. 1948, c. 48, s. 4.

134.—(1) A contract is deemed to be made in the When contract deemed to be made in the Province. Province,

(a) if the place of residence of the insured is stated in the application or the policy to be in the Province; or

(b) if neither the application nor the policy contains a statement as to the place of residence of the insured, but the actual place of residence of the insured is within the Province at the time of the making of the contract. R.S.O. 1937, c. 256, s. 130.

(2) This section does not apply to a contract of group life insurance. 1948, c. 48, s. 5. Exception as to application of section.

THE CONTRACT OF INSURANCE

135. Every contract of insurance shall be evidenced by an instrument in writing called, in this Part, a policy. Policy to evidence a contract. R.S.O. 1937, c. 256, s. 131.

136.—(1) Every policy issued after the 1st day of January, 1925, other than a group life insurance policy, shall state the name or sufficient designation of the insured, of the person whose life is insured, and of the beneficiary, the insurance money payable, the manner of payment, the premium, and the facts that determine the maturity of the contract. Contents of policy.

(2) Every group life insurance policy shall state the name or sufficient designation of the insured, the method of determining the amount of insurance on each life and the persons or classes of persons whose lives are insured, and the facts that determine the manner and time of payment of the insurance money and the amount of the premium. 1948, c. 48, s. 6 (1). Contents of group life insurance policy.

(3) Every policy shall state the period of grace within which the premiums may be paid and the terms and conditions upon which the policy may, if it shall lapse, be reinstated, and shall Terms and conditions.

indicate the amount, if any, of cash surrender or loan value and the options, if any, of the insured as to paid up or extended insurance respectively provided by the policy.

Participation.

(4) Every policy shall further indicate whether or not it will participate in any surplus or profits which may be declared. R.S.O. 1937, c. 256, s. 132 (2, 3).

Contents of policy.

(5) Every policy which includes disability insurance shall further state what notice of disablement shall be given to the insurer.

Group life insurance certificates.

(6) In the case of a contract of group life insurance made after the 30th day of June, 1948, the insurer shall issue, for delivery by the insured to each person whose life is insured under the policy, a certificate identifying the policy and stating the name or sufficient designation of the person whose life is insured, of his beneficiary, of the insurer, and of the insured, and stating the amount or the method of determining the amount of insurance and indicating any right of the person whose life is insured upon termination of insurance on his life under the policy. 1948, c. 48, s. 6 (2).

Application of section.

(7) This section shall not apply to a contract of insurance made by a fraternal society. R.S.O. 1937, c. 256, s. 132 (5).

Interpretation.

137.—(1) Except as provided in subsection 2, in the case of group life insurance the employer or other person making the contract with the insurer is the insured for the purposes of this Part.

Idem.

(2) In the case of group life insurance the term "insured", in the provisions of this Part relating to the designation or appointment of beneficiaries and the rights and status of beneficiaries, means the person whose life is insured. 1948, c. 48, s. 7.

Payment of policy not exceeding \$2,000.

138. Where the amount of insurance money, exclusive of dividends and bonus, does not exceed \$2,000, the policy, notwithstanding that it is expressed to be payable to a named or designated beneficiary, may provide that the insurance money may be paid to any relative by blood or connection by marriage of the person whose life is insured or any other person appearing to the insurer to be equitably entitled to the same by reason of having incurred expense for the maintenance, medical attendance or burial of the person whose life is insured or to have a claim against the estate of the person whose life is insured in relation thereto. 1948, c. 48, s. 8.

139.—(1) Except in the case of a contract made with a fraternal society, no term or condition of a contract of insurance which is not set out in full in the policy or in a document or documents in writing attached to it, when issued, shall be valid or admissible in evidence to the prejudice of the insured or a beneficiary. Invalidity of terms not set out in policy.

(2) Subsection 1 shall not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy. Subsequent alterations.

(3) In the case of a contract of insurance made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution and laws and the amendments validly made thereto, and the application for the contract and medical examination of the applicant as signed by him shall constitute the contract between the society and its member. R.S.O. 1937, c. 256, s. 134. Contract of fraternal society.

140.—(1) The applicant for a contract and the person whose life is to be insured shall each disclose to the insurer in the application for the contract, on the medical examination, if any, or in any statements or answers furnished in lieu of a medical examination every fact within his knowledge which is material to the contract, and a failure to disclose or misrepresentation of any such fact by either person shall render the contract voidable at the instance of the insurer. R.S.O. 1937, c. 256, s. 135 (1). Disclosure and misrepresentation by insured.

(2) The statements made by the insured, or the person whose life is insured, in the application, on the medical examination, if any, or in any statements or answers furnished in lieu of a medical examination other than fraudulent statements or statements erroneous as to age, shall be deemed to be true and incontestable after the insurance on the person whose life is insured has been in force for two years during his lifetime, but this provision shall not apply with respect to disability insurance or double indemnity insurance. 1948, c. 48, s. 9. Incontestability of statements.

141. A failure to disclose or misrepresentation of a fact material to the contract by the insurer shall render the contract voidable at the instance of the insured; provided that in the absence of fraud the contract shall not by reason of such failure to disclose or misrepresentation be voidable after the contract has been in force for two years during the lifetime of the person whose life is insured. R.S.O. 1937, c. 256, s. 136. Disclosure and misrepresentation by insurer.

142. The question of materiality shall be one of fact. Materiality. R.S.O. 1937, c. 256, s. 137.

Misstatement of age.

143.—(1) Where the age of the person whose life is insured is understated in the application, the insurance money shall be reduced to the amount which would have been payable in respect of the premium stated in the policy at the correct age, according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

Calculation of amount of benefits under policy.

(2) Where such tables of rates of premium of the insurer do not extend to or include the rates for the correct age of the person whose life is insured, the insurance money shall be reduced in the proportion that the premium at the age stated in the application bears to the premium at the correct age, both premiums for this purpose being the net premiums shown in or deduced from the British Offices' Life Table, 1893, O^M ⁽⁵⁾, the rate of interest being three and one-half per cent per annum, or, at the option of the insurer, both premiums for this purpose being calculated on the same principles as govern the calculation of premiums for ages mentioned in the table of rates of premium of the insurer in force at the time of the issue of the policy.

Where age overstated.

(3) Where the age of the person whose life is insured is overstated in the application, and the policy does not provide that in that event the insurance money shall be increased, the insurer shall repay the amount by which the premium paid exceeds the premium which would have been payable in respect of the correct age, but if the policy so provides, the insurance money shall be increased to the amount which would have been payable in respect of the premium stated in the policy at the correct age according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

What to be deemed correct age and stated age.

(4) Where, by the terms or for the purposes of the contract, an addition is made to the age stated in the application, and the age is understated in the application, then, for the purpose of the calculation, the correct age and the stated age shall respectively be deemed to be the correct age and the stated age increased by such addition.

Where insurable age expressly limited.

(5) Where the application or contract expressly limits the insurable age, and the correct age at the date of the application exceeds the age so limited, the contract shall, during the lifetime of the person whose life is insured, but not later than five years from the date of the policy, be voidable at the option of the insurer within thirty days after the error comes to its knowledge. R.S.O. 1937, c. 256, s. 138.

Exception as to application of section.

(6) This section does not apply to a contract of group life insurance. 1948, c. 48, s. 10.

144. If a contract of group life insurance provides that the age of a person whose life is insured affects the commencement or the termination of the insurance or the amount thereof or any other right or benefit under the contract, the true age shall govern. 1948, c. 48, s. 11.

145.—(1) Unless the contract or the application otherwise expressly provides, the contract shall not take effect or be binding on either party until the policy is delivered to the insured, his assign, or agent, or the beneficiary named therein and payment of the first premium is made to the insurer or its duly authorized agent, no change having taken place in the insurability of the life about to be insured subsequent to the completion of the application. R.S.O. 1937, c. 256, s. 139 (1). Conditions precedent to contract taking effect.

(2) Subject to section 146, where a cheque, bill of exchange or promissory note payable to the insurer, or other written promise to pay the insurer, is given, whether originally or by way of renewal, for the whole or part of any premium, and such cheque, bill of exchange or promissory note, or other written promise to pay, is not paid according to its tenor, the contract shall, unless otherwise provided in the policy, be void. 1948, c. 48, s. 12. Effect of default in payment of premium.

146.—(1) Where any premium, not being the initial premium, under any contract is unpaid, the insured, his assign or agent, or any beneficiary, may, within a period of grace of thirty days or, in the case of an industrial contract, four weeks from and excluding the day on which the premium is due, pay, deliver or tender to the insurer at its head office, or at its chief agency in the Province, or to its collector or authorized agent, the sum in default. Period of grace for payment of premiums.

(2) The payment may be made by sending a post office order or postal note, or a cheque payable at par and certified by a bank doing business in Canada under *The Bank Act* (Canada), or a draft of such bank, or a money order of an express company doing business in the Province, in a registered letter duly addressed to the insurer, and the payment, delivery or tender shall be deemed to have been made at the time of the delivery and registration of the letter at any post office. Manner of payment. 1944-45 (Can.), c. 30.

(3) Payment, delivery or tender as aforesaid shall have the same effect as if made at the due date of the premium. Effect of such payment.

(4) The period of grace hereinbefore in this section mentioned shall run concurrently with the period of grace, if any, allowed by the contract for the payment of a premium or of an instalment of premium. Concurrent period of grace under contract.

Contracts deemed to be in force during period of grace.

(5) Upon the maturity of the contract during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in as full force and effect as if the premium had been paid at its due date, but the amount of such premium with interest, not in excess of six per cent per annum, and the balance, if any, of the current year's premium, may be deducted from the insurance money.

Longer period of grace under contract not affected.

(6) Nothing in this section shall deprive the insured of the benefit of any period of grace allowed by the contract in excess of the period of grace allowed by this section. R.S.O. 1937, c. 256, s. 140.

Reinstatement of lapsed contract.

147.—(1) Where a contract lapses and its cash value has not been paid and any options as to paid up or extended insurance have not been exercised, the insured shall be entitled to have the contract reinstated upon application within two years, or in the case of an industrial contract within one year, from the date of lapse upon the production of evidence of good health and other evidence of insurability of the person whose life was insured satisfactory to the insurer as at the date of the application for reinstatement and upon payment of all overdue premiums and other indebtedness to the insurer under the contract, with interest at such rate not exceeding six per cent per annum compounded annually, as the contract provides, and provided that no change has taken place in such good health and insurability subsequently to the date of such application and before the contract is reinstated:

Application of s. 140.

(2) Where an application is made to reinstate a contract and the contract is reinstated, section 140 shall *mutatis mutandis* apply, and the period of two years referred to in subsection 2 of that section shall run from the date of reinstatement.

Suicide.

(3) If the contract which lapsed provided that in the event of the suicide of the person whose life was insured within a period of time fixed thereby it should be void or that the amount payable thereunder should be reduced, and after the contract is reinstated such person commits suicide within a period of time commencing with the date of reinstatement and of the same duration as the period of time fixed by the contract, the reinstated contract shall be likewise void, or the amount payable thereunder shall be likewise reduced. R.S.O. 1937, c. 256, s. 141 (1-3).

Exception as to application of section.

(4) This section does not apply to a contract of insurance made by a fraternal society or to a contract of group life insurance. 1948, c. 48, s. 13.

148. The insurer shall, upon request, furnish to the insured a true copy of the application for the insurance. R.S.O. 1937, c. 256, s. 142. Duty of insurer to furnish copy of application.

149.—(1) Except in the case of contracts of fraternal societies entered into prior to the 1st day of January, 1937, where by a contract or declaration the insured appoints as beneficiaries or appoints or apportions insurance money to his "heirs", "legal heirs", "lawful heirs" or "next of kin", the appointment or apportionment shall be deemed to be for the benefit of the estate of the insured. Meaning of "heirs" and like words in contract or declaration.

(2) In the case of contracts of fraternal societies entered into prior to the 1st day of January, 1937, where by a contract or declaration the insured appoints as beneficiaries or appoints or apportions insurance money to his "heirs", "legal heirs", "lawful heirs" or "next of kin" the appointment or apportionment shall be deemed to be in favour of the persons provided by the law of the province, state or country in which the insured was domiciled at the time of his death respecting the distribution of the personal property of an intestate, and the insurance money so appointed or apportioned shall be paid to those persons in the shares provided by that law, and the insurance money shall not form part of the estate of the insured. R.S.O. 1937, c. 256, s. 143. Application of law of domicile.

150. No officer, agent, employee or servant of the insurer or any person soliciting insurance, whether an agent of the insurer or not, shall to the prejudice of the insured be deemed to be for any purpose whatever the agent of the insured in respect of any question arising out of the contract of insurance. R.S.O. 1937, c. 256, s. 144. Certain persons not to be deemed agents of insured.

INSURABLE INTEREST

151. Every person has an insurable interest in his own life. R.S.O. 1937, c. 256, s. 145. Insurable interest in own life.

152. Without restricting the meaning which "insurable interest" now has in law, each of the following persons has an insurable interest: Insurable interest in lives of others.

- (a) a parent in the life of his child under twenty-five years of age;
- (b) a husband in the life of his wife;
- (c) a wife in the life of her husband;

- (d) one person in the life of another, upon whom he is wholly or in part dependent for support or education, or from whom he is receiving support or education;
- (e) a corporation or other person in the life of its or his officer or employee;
- (f) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person. R.S.O. 1937, c. 256, s. 146.

Contract void without insurable interest.

153. The contract shall be void, if, at the time at which it would otherwise take effect and be binding, the insured has no insurable interest. R.S.O. 1937, c. 256, s. 147.

When insurable interest unnecessary.

154. Where the insured has at the time at which the contract takes effect an insurable interest in the life insured, it is not necessary for the validity of the contract or any assignment that any beneficiary, or any person claiming under an assignment, or by will or by succession, have an insurable interest. R.S.O. 1937, c. 256, s. 148.

POLICIES ON THE LIVES OF MINORS

Capacity of minors.

155. A minor shall, after attaining the age of fifteen years, have the capacity of a person of full age,

- (a) to effect a contract of insurance on his own life and to deal with such contract;
- (b) to deal with a contract of insurance on his own life effected by him before attaining the age of fifteen years;
- (c) to deal with his interest in a contract of insurance effected on his life by another, whether effected before or after the minor attained the age of fifteen years;
- (d) if married, to effect a contract of insurance on the life of his wife or her husband or his or her children, as the case may be, and to deal with such contract. R.S.O. 1937, c. 256, s. 149.

Restriction on insurance on lives of children under five years.

156.—(1) No insurer shall pay on the death of a child who has not attained the age of five years an amount that alone or together with any amount payable on the death of the child by another insurer exceeds the following amount:

\$200 if the child dies before attaining the age of 1 year.

\$400 if the child dies after attaining the age of 1 year but before attaining the age of 2 years.

\$600 if the child dies after attaining the age of 2 years but before attaining the age of 3 years.

\$800 if the child dies after attaining the age of 3 years but before attaining the age of 4 years.

\$1,000 if the child dies after attaining the age of 4 years but before attaining the age of 5 years.

(2) Where the amount payable under a contract on the death of the child, either alone or together with an amount payable under any other contract previously made, is in excess of the maximum amount that may be paid under subsection 1, and the child dies before attaining the age of five years, the amount payable on death in excess of the amount specified in subsection 1 shall be limited to, Where insurance excessive.

(a) the amount of any excess premiums paid under the contract; and

(b) if the insurer has knowingly or without sufficient inquiry entered into the contract, interest at six per cent per annum on the excess premiums.

(3) Every insurer that undertakes insurance on the lives of children who have not attained the age of five years shall print the scale of benefits set out in subsection 1 in conspicuous type upon every circular or advertisement soliciting the insurance, and upon every policy evidencing the insurance. Scale of benefits to appear on circular, etc.

(4) This section does not, Application of section.

(a) apply to a contract under which the insured has a pecuniary interest in the life insured, or that limits the payment on the death of a child who has not attained the age of five years to the premiums that have been paid, with interest at the rate provided in the contract; or

(b) preclude the payment of dividends or the repayment of premiums in addition to the amounts specified in subsection 1. 1950, c. 31, s. 1.

THIRD PARTY POLICIES ON LIVES OF MINORS

157.—(1) Where a contract effected on the life of a minor by someone other than the minor, or an agreement in writing between the insurer and the insured respecting such a contract, provides that a person named in the contract or the agreement Third party policies on lives of minors.

shall upon the death of the insured have all the rights and interests of the insured in the contract,

- (a) the contract shall not, upon the death of the insured, form part of his estate; and
- (b) the person named pursuant to this section shall, upon the death of the insured, have all the rights and interests of the insured in the contract and shall be deemed to be the insured.

Saving.

(2) Notwithstanding any nomination made pursuant to this section the insured may, prior to his death, deal with the contract as if such nomination had not been made, and may alter or revoke such nomination by agreement in writing with the insurer. 1948, c. 48, s. 14.

BENEFICIARIES

Classes of
beneficiaries,
for value.

158.—(1) Beneficiaries for value are beneficiaries who have given valuable consideration other than marriage and who are expressly stated to be, or described as, beneficiaries for value in the policy or in an endorsement thereon or in a subsequent declaration signed by the insured.

Preferred
beneficiaries.

(2) Subject to section 167, preferred beneficiaries are the husband, wife, children, adopted children, grandchildren, children of adopted children, father, mother and adopting parents of the person whose life is insured.

Ordinary
beneficiaries.

(3) Ordinary beneficiaries are beneficiaries who are not preferred beneficiaries, beneficiaries for value or assignees for value. R.S.O. 1937, c. 256, s. 151.

Right of
beneficiary
for value
or assignee
for value.

159. A beneficiary for value and an assignee for value of a policy shall have a vested interest in the policy; but except as regards beneficiaries for value who are expressly stated to be or described as beneficiaries for value in the policy, a beneficiary for value or assignee for value who gives notice in writing of his interest in the policy to the insurer at the head or principal office of the insurer in Canada prior to any other beneficiary for value or assignee for value shall have priority of interest as against such last-mentioned beneficiary or assignee. R.S.O. 1937, c. 256, s. 152.

Appoint-
ment of
beneficiary.

160. Where a contract is assigned, otherwise than as security for a loan or debt, to the person whose life is insured, that person shall thereupon be deemed to be the insured. 1948, c. 48, s. 15.

161.—(1) Subject to the rights of beneficiaries for value and assignees for value and to the provisions of this Act relating to preferred beneficiaries, the insured may designate the beneficiary by the contract or by a declaration, and may from time to time by any declaration appoint, appropriate or apportion the insurance money, or alter or revoke any prior designation, appointment, appropriation or apportionment, or substitute new beneficiaries, or divert the insurance money wholly or in part to himself or his estate, and may surrender the contract to the insurer, borrow from the insurer upon the security of the contract, receive the surplus or profits for his own benefit, and otherwise deal with the contract as may be agreed upon between him and the insurer. R.S.O. 1937, c. 256, s. 153 (1).

Power of insured to deal with contract by declaration or otherwise.

(2) Subject to subsection 1, a beneficiary or a trustee appointed pursuant to section 186 may, at the maturity of the contract, enforce for his own benefit or as such trustee the payment of insurance money appointed, appropriated or apportioned to him by the contract or a declaration and in accordance with the terms thereof, but the insurer shall be entitled to set up any defence which it could have set up against the insured or his personal representatives; and payment made to the beneficiary or trustee shall discharge the insurer. 1946, c. 42, s. 6, *part*.

Payment of insurance money.

(3) A person whose life is insured under a contract of group life insurance may in his own name enforce any right stated in the policy to be given to him, subject to any defence available to the insurer against him or the insured. 1948, c. 48, s. 16.

Group life insurance.

(4) A declaration, whether contained in a will or other instrument in writing, shall, subject to subsection 1, have effect from the time of its execution, but a declaration shall not affect the interest or rights of a beneficiary for value or assignee for value unless the declaration has been filed with the insurer at its head or principal office in Canada prior to the time when the beneficiary for value or assignee for value acquired such interest or rights and if not so filed the interest or rights of the beneficiary for value or assignee for value shall be as if the declaration had not been made.

Effect of declaration.

(5) In the case of a declaration contained in a will it shall be sufficient for the purposes of subsection 4 to file a copy thereof or of the material part thereof verified by statutory declaration. 1946, c. 42, s. 6, *part*.

Declaration in will.

(6) A declaration contained in an instrument purporting to be a will which has not been revoked otherwise than by operation of law shall be effective as a declaration, notwith-

Other declarations.

standing that the instrument is invalid as a testamentary instrument. R.S.O. 1937, c. 256, s. 153 (3).

Equality
between
beneficiaries.

162. Where two or more beneficiaries are designated otherwise than alternatively, but no apportionment is made, they shall share equally. R.S.O. 1937, c. 256, s. 154.

Disposal of
shares of
deceased
ordinary
beneficiaries.

163. Where there are several beneficiaries of whom one or more are ordinary beneficiaries and one or more of the ordinary beneficiaries die before the maturity of the contract, and no apportionment or other disposition of his or their shares is provided for in the contract or by a declaration, the share of any such deceased ordinary beneficiary, shall be payable to the surviving designated beneficiary or beneficiaries, whether preferred or ordinary, and, if more than one, in equal shares but, if there is no surviving beneficiary, shall be payable to the insured or his estate. R.S.O. 1937, c. 256, s. 155.

Trust in
favour of
preferred
beneficiaries.

164.—(1) Where the insured, in pursuance of the provisions of section 161, designates as beneficiary or beneficiaries, a member or members of the class of preferred beneficiaries, a trust is created in favour of the designated beneficiary or beneficiaries, and the insurance money, or such part thereof as is or has been apportioned to a preferred beneficiary, shall not, except as otherwise provided in this Act, be subject to the control of the insured, or of his creditors, or form part of the estate of the insured.

Right to
income only.

(2) The contract may provide or the insured may at any time direct by declaration that a preferred beneficiary shall be entitled only to the income from insurance money for life or for a period of time or subject to any limitation or contingency stated in the instrument.

Proviso.

(3) The provisions of this section are subject to any vested rights of beneficiaries for value and assignees for value, to the provisions hereinafter contained relating to preferred beneficiaries, and to any contingency or limitation stated in the instrument by which the insured designates a preferred beneficiary, provided that no provision in any instrument reserving to the insured the right to revoke or abridge the interest of a preferred beneficiary shall be effective so as to enable the insured to revoke or abridge that interest in favour of a person not in the class of preferred beneficiaries. R.S.O. 1937, c. 256, s. 156.

Disposal of
insurance
moneys
within class
of preferred
beneficiaries.

165. Notwithstanding the designation of a preferred beneficiary or beneficiaries, the insured may subsequently exercise the powers conferred by section 161 so as to restrict, limit, extend or transfer the benefits of the contract to any one or

more of the class of preferred beneficiaries to the exclusion of any or all others of the class, or wholly or partly to one or more for life or any other term or subject to any limitation or contingency, with remainder to any other or others of the class.—R.S.O. 1937, c. 256, s. 157.

166.—(1) Subject to section 168, where by the policy or by a subsequent declaration the insurance money or any part of it is made payable to or for the benefit of the wife of the person whose life is insured, his future wife, his wife and children or his future wife and children generally, or his children generally, the word “wife” means the wife living at the maturity of the contract, and the word “children” includes all the children of the person whose life is insured living at the maturity of the contract as well as the issue living at the maturity of the contract of any child of his who predeceases him, such issue taking by representation.

Meaning of “wife” and “children” in policy or declaration.

(2) The provisions of subsection 1 shall *mutatis mutandis* apply to insurance effected by a woman on her life where the insurance money or any part of it is made payable to or for the benefit of her husband or future husband, her husband and children or future husband and children generally, or her children generally.

Meaning of “husband” and “children” in policy or declaration.

(3) Subsections 1 and 2 shall not apply where the beneficiary or beneficiaries is or are designated by name, or otherwise definitely indicated. R.S.O. 1937, c. 256, s. 158.

Proviso.

167. For the purposes of this Part an adopted child and its adopting parent shall from the date of the adoption be deemed to bear towards one another the relationship of preferred beneficiaries, and an adopted child and its natural parents shall from the date of the adoption be deemed to bear towards one another the relationship of ordinary beneficiaries, and in either case this provision shall apply in respect of insurance effected both before and after the date of adoption. R.S.O. 1937, c. 256, s. 159.

Effect of adoption on relationship of beneficiaries.

168.—(1) Subject to subsection 2 the contract may provide or the insured may at any time direct by declaration that if a preferred beneficiary shall die before the maturity of the contract, the insurance money or any part thereof appointed to the preferred beneficiary shall be payable to the insured, to his estate, or to any other person, whether that person is within the class of preferred beneficiaries or not.

Disposal of share of deceased preferred beneficiary, right to designate alternative beneficiary.

Where alternative preferred beneficiary named.

(2) Where the contract provides or the insured by a declaration directs that insurance money shall go to a preferred beneficiary and in the event of the death of the preferred beneficiary to some other person in the class of preferred beneficiaries, and the first named beneficiary dies, the insured may before the maturity of the contract exercise only the powers referred to in section 165.

Where no alternative preferred beneficiary named.

(3) In case of the death of a preferred beneficiary before the maturity of the contract and in the absence of any provision in the contract or a declaration by which some other person in the class of preferred beneficiaries is to become entitled to the insurance money or any part thereof appointed to the deceased beneficiary in the event of his death or upon the happening of any other event, the insured may deal under section 161 with the insurance money or part thereof in the same manner and to the same extent as if the deceased beneficiary had not been a preferred beneficiary.

Proviso.

(4) Subject to the provisions of this section the share of a preferred beneficiary who dies before the maturity of the contract shall be payable as follows:

- (a) If the deceased beneficiary was a child of the person whose life is insured, and has left issue surviving at the maturity of the contract, his share, and any share to which he would have been entitled if he had survived, shall be payable to such issue in equal shares, such issue taking by representation.
- (b) If there is no person entitled under clause *a*, the share of such deceased beneficiary shall be payable to the surviving designated preferred beneficiary or beneficiaries in equal shares.
- (c) If there is no person entitled under clauses *a* and *b*, the share of such deceased beneficiary shall be payable in equal shares to the wife or husband and the child or children of the person whose life is insured living at the maturity of the contract, and the issue then living of any deceased child of the person whose life is insured, such issue taking in equal shares the share to which his or their parent would have been entitled if living.
- (d) If there is no person entitled under clauses *a*, *b* and *c*, the share of such deceased beneficiary shall be payable to the insured, or his estate. R.S.O. 1937, c. 256, s. 160.

169.—(1) Where the wife or husband of the person whose life is insured is designated as beneficiary, and is subsequently divorced, all interest of the beneficiary under the policy shall pass to the insured or his estate, unless such beneficiary is a beneficiary for value, or an assignee for value. Effect of divorce of certain beneficiaries.

(2) Where a divorce has been granted on the application of the beneficiary, the beneficiary shall be estopped from denying the validity of the divorce for the purpose of this section. When deemed lawfully divorced.

(3) Until the insurer receives at its head or principal office in Canada notice in writing of the Act of Parliament, judgment, decree or order granting the divorce, it may deal with the insurance money in the same manner and with the same effect as if no divorce had been granted, and before paying the insurance money, the insurer shall be entitled to receive the original judgment, order or decree or a duly verified copy thereof, or a duly verified copy of the Act of Parliament, or a copy thereof printed by the King's printer, as the case may be. Notice of divorce.

(4) Nothing in subsection 3 shall affect the right of any person entitled to payment by virtue of such divorce to recover from any person to whom payment is made by the insurer. R.S.O. 1937, c. 256, s. 161. Recovery.

170. Where the wife or husband of the person whose life is insured is designated as beneficiary, and it appears, in the case of the wife, that she is living apart from her husband in circumstances disentitling her to alimony, or in the case of the husband, that he is living apart from his wife in circumstances disentitling him to an order for restitution of conjugal rights, and that there is no other member of the class of preferred beneficiaries whom the insured may designate as beneficiary in place of the designated beneficiary, the court may, on the application of the insured, and on such terms as may seem fit, declare the designated beneficiary disentitled to claim the benefit of the provisions of this Part relating to preferred beneficiaries, and the insured may then deal with the policy as provided by section 161. R.S.O. 1937, c. 256, s. 162. Circumstances disentitling wife or husband as beneficiary.

171.—(1) Where a preferred beneficiary is designated, the insured may surrender the contract to the insurer and accept in lieu thereof any paid up or extended insurance provided by the contract in favour of the preferred beneficiary. Surrender of or borrowing on contract where preferred beneficiary.

(2) Where a preferred beneficiary is designated, the insured may, from time to time, borrow from the insurer on the security of the contract, such sums as may be necessary and are applied to keep it in force, and the sums so borrowed, with such interest as may be agreed on, shall be a first charge

on the contract and the insurance money. R.S.O. 1937, c. 256, s. 163.

Surplus.
and profits.

172.—(1) Notwithstanding the designation of a preferred beneficiary, any person who effects a participating contract, other than a contract of group life insurance, may, during his lifetime, receive for his own benefit the surplus or profits declared on the contract or may direct the insurer to apply them in payment or reduction of premiums, or in the purchase of paid-up additions to the sum insured, or to hold them to his credit for accumulation, or to deal otherwise with such surplus or profits as the contract may provide, and upon the maturity of the contract, all surplus or profits so held to the credit of the insured, or being due and unpaid, shall, subject to the contract and to any direction by the insured to the contrary, be added to the insurance money and the share of any beneficiary shall be increased accordingly.

Idem.

(2) In the case of group life insurance, surplus, profits, dividends or bonuses shall be applied in accordance with the terms of the contract. 1948, c. 48, s. 17.

Insurer may
apply
surplus to
keep contract
in force.

(3) The insurer may apply for the purpose of keeping the contract in force any surplus or profits declared on the contract and held by the insurer to the credit of the contract or of the insured, or held for accumulation, and not otherwise applied or dealt with under subsection 1.

Obligation
of insurer.

(4) The insurer shall not be obliged to pay or apply any surplus or profits in a manner contrary to the terms of the contract or of any subsequent agreement. R.S.O. 1937, c. 256, s. 164 (2, 3).

Dealing
with con-
tract with
consent of
beneficiary.

173.—(1) Where all the designated preferred beneficiaries are of full age, they and the insured may surrender the contract or may assign or dispose of the same either absolutely or by way of security, to the insurer, the insured or any other person, but notwithstanding anything herein contained the insured may exercise the borrowing powers conferred by section 171 without the concurrence of any beneficiary.

Idem.

(2) Where the beneficiaries, whether designated by name or not, include the wife or children or grandchildren, it shall be sufficient, so far as their interests are concerned, if all then living are of full age and join in the surrender, assignment or disposal.

Where
payable to
person under
disability,
order of
court.

(3) Where insurance money is made payable to a minor or other person under disability or to a trustee on behalf of a minor or person under disability, and where the insurance money or a part thereof is required for the maintenance or

education of the minor or person under disability, the court may, upon the application of the insured, upon at least ten days notice to the insurer, make an order, on such terms as it may deem just, permitting the insured to surrender the contract to the insurer, or to borrow from the insurer on the security thereof and payment by the insurer in accordance with such order shall discharge it from liability in respect of such payment.

(4) Where a contract has been assigned as security for any loan or debt the rights of any beneficiary, whether ordinary or preferred, under such contract shall be affected only to the extent necessary to give effect to the rights of the assignee, and when the loan or debt is discharged the assignee shall furnish a certificate in writing to that effect and that the assignee has no further right, title or interest in the contract. Where contract has been assigned.
R.S.O. 1937, c. 256, s. 165.

174. Where by a contract or any instrument in writing a person is to become entitled to insurance money only in the event of the death of another person named as a beneficiary it shall not be necessary for such first-mentioned person to join in any surrender, assignment or disposal of the contract. Consent of contingent beneficiary not necessary.
R.S.O. 1937, c. 256, s. 166.

175.—(1) Where the insurance money is payable in instalments and the contract, or an instrument in writing signed by the insured and delivered to the insurer, expressly provides that the beneficiary shall not have the right to commute the instalments or to alienate or assign his interest therein, the insurer shall not commute the instalments or pay them to any person other than the beneficiary, and the instalments shall not, in the hands of the insurer, be subject to legal process except in an action to recover for necessities supplied to the beneficiary or his or her infant children. Dealing with insurance money payable in instalments.

(2) Notwithstanding anything in subsection 1, Exceptions.

- (a) the insured may, by an instrument in writing signed by him and delivered to the insurer, declare that the beneficiary shall have the right to commute, or alienate or assign, as the case may be;
- (b) the court may, upon the application of the insurer or the beneficiary, upon at least ten days notice, declare that in view of special circumstances the beneficiary shall have the right to commute, or alienate or assign, as the case may be;
- (c) after the death of the beneficiary his personal repre-

sentatives may commute any instalments payable to them.

Interpre-
tation.

(3) In this section, "instalments" includes insurance money or any part thereof held by the insurer under section 176. R.S.O. 1937, c. 256, s. 167.

Insurance
money held
by insurer
subject to
terms of
contract
or other
directions.

176. Subject to the provisions of this Part relating to preferred beneficiaries, where it is so expressly provided in the contract or by an agreement in writing with the insurer or by a declaration, the insurer may hold the insurance money or any part thereof after maturity of the contract subject to the order of the beneficiary, or upon such trusts or other agreements for the benefit of the beneficiary as may be provided in the contract, agreement or declaration, allowing and paying for the term during which the insurer retains such insurance money or any part thereof, interest thereon at a rate not less than that specified in the contract, agreement or declaration, or, if no rate be agreed upon, at the rate declared from time to time by the insurer in respect to insurance money so held by it; provided that the insurer shall not be bound to carry out the terms of any declaration to which it has not agreed in writing. R.S.O. 1937, c. 256, s. 168.

Payments
by insurer
without
notice of
change in
title to
insurance
money.

177.—(1) Until the insurer receives at its head or principal office in Canada notice in writing of the making of an order declaring a beneficiary disentitled to insurance money, or of any instrument in writing affecting the insurance money or any part thereof or of the appointment or the revocation of the appointment of a trustee, it may make any payment which would have been lawful and valid except for such order, instrument in writing, appointment or revocation of appointment, and before making any payment under such order, instrument in writing, appointment or revocation of appointment, it shall be entitled to receive the original or a true copy thereof.

Proviso.

(2) Nothing in this section shall affect the right of any person entitled to payment by virtue of such order, instrument in writing, appointment or revocation of appointment, to recover from any person to whom payment has been made by the insurer. R.S.O. 1937, c. 256, s. 169.

Right of
insurer to
give or
withhold
information.

178. The insurer shall not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument in writing affecting the insurance money which the insurer has received. R.S.O. 1937, c. 256, s. 170.

PROOF OF CLAIM AND PAYMENT

179.—(1) The insurer shall be entitled to reasonably sufficient proof in writing verified by affidavit or statutory declaration of the maturity of the contract, of the age of the person whose life is insured and of the right of the claimant to receive payment of the insurance money. Insurer entitled to certain proof of claim, age of insured and right of claimants.

(2) Where the insurance money or part thereof is payable to or for the benefit of a beneficiary, the insurer shall be entitled to reasonably sufficient proof of the name and age of the beneficiary. Name and age of beneficiary. R.S.O. 1937, c. 256, s. 171.

180.—(1) Insurance money which is expressed to be payable at the maturity of the contract shall be payable thirty days after reasonably sufficient proof has been furnished to the insurer of the maturity of the contract, of the age of the person whose life is insured, and of the right of the claimant to receive payment. Time for payment of insurance money. R.S.O. 1937, c. 256, s. 172 (1).

(2) Except in the case of a contract of group life insurance, insurance money shall be payable in the province in which the insured is domiciled at the time of death, or in which he is domiciled when it becomes payable otherwise than by reason of death, or, if he was not or is not then domiciled in Canada and the contract does not otherwise provide, shall be payable at the head or principal office of the insurer in Canada. Place of payment.

(3) In the case of a contract of group life insurance, insurance money shall be payable in the province in which the person whose life is insured is domiciled at the time of death, or in which he is domiciled when it becomes payable otherwise than by reason of death, or, if he was not or is not then domiciled in Canada and the contract does not otherwise provide, shall be payable at the head or principal office of the insurer in Canada. Idem. 1948, c. 48, s. 18.

(4) Every amount to be paid to or by an insurer under a contract shall be payable in lawful money of Canada, unless the contract expressly provides for payment in another currency. Manner of payment.

(5) In every contract, whether the contract by its terms provides for payment in Canada or elsewhere, amounts expressed in dollars shall mean lawful dollars of Canadian currency, unless some other currency is specifically provided for in the contract. Meaning of "dollars". R.S.O. 1937, c. 256, s. 172 (3, 4).

181. Where insurance money is payable in respect of a policy on the life of a person who is at the date of his death domiciled elsewhere than in Canada to another person domi- Payments outside of Canada.

ciled elsewhere than in Canada, and there is no person in Canada entitled to receive it, the insurer may pay it to the person to whom it is so payable, or to any other person entitled to receive it on his behalf by the law of the domicile of the payee. R.S.O. 1937, c. 256, s. 173.

Application
to court for
declaration
as to
sufficiency
of proofs.

182.—(1) Where the insurer admits the validity of the contract but does not admit the sufficiency of the proof furnished by the claimant of the maturity of the contract, or of the age of the person whose life is insured, or of the right of the claimant to receive payment of the insurance money, and where there is no other question in issue, except a question under subsection 2, the insurer or the claimant may, before or after action brought, upon at least thirty days notice apply to the court for a declaration as to the sufficiency of the proof furnished, and the court may direct what further proof shall be furnished, or in special circumstances, may dispense with further proof.

Declaration
as to
presumption
of death.

(2) Where the claimant alleges that the person whose life is insured is presumed to be dead by reason of his not having been heard of for seven years, and where there is no other question in issue except a question under subsection 1, the insurer or the claimant may, before or after action brought, upon at least thirty days notice, apply to the court for a declaration as to the presumption of death.

Effect of
order of
court.

(3) If the court finds that the proof of the maturity of the contract or of the age of the person whose life is insured or of the right of the claimant to receive payment is sufficient, or that a presumption of death has been established, or makes an order directing what further proof shall be furnished or in special circumstances dispensing with further proof, the finding or order of the court shall, subject to appeal, be conclusive and binding upon the applicant and all parties notified of the application and the court may make such order as to the payment of the insurance money and as to the costs as to it may seem just.

Effect of
payment.

(4) The payment by the insurer in accordance with the order shall discharge it from liability in respect of such payment.

Powers of
Judge.

(5) If the court does not find that the proof of the maturity of the contract, of the age of the person whose life is insured, or of the right of the claimant to receive payment is sufficient, or that the presumption of death is established, the court may order that the question or questions in issue be decided in an action brought or to be brought, or may make such other order as to it seems just as to further proof to be furnished

by the claimant, as to publication of advertisements, as to further inquiry, and as to costs, or otherwise.

(6) Unless otherwise ordered by the court, the application shall operate as a stay of any pending action with respect to the insurance money. R.S.O. 1937, c. 256, s. 174. Stay of proceedings.

183. Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that the beneficiary or beneficiaries died first. R.S.O. 1937, c. 256, s. 175. Presumption where insured and beneficiary perish in same disaster.

184. An agreement, express or implied, contained in a contract of life insurance for the payment of insurance money in the event that the person whose life is insured commits suicide shall be lawful and enforceable. 1948, c. 48, s. 19. Contract not invalidated by suicide.

MISCELLANEOUS

185.—(1) Subject to subsections 2 to 4, any action or proceeding against the insurer for the recovery of insurance money shall be commenced within one year next after the furnishing of reasonably sufficient proof of the maturity of the contract and of the right of the claimant to receive payment, or within six years next after the maturity of the contract, whichever period shall first expire, but not afterwards. Limitation of actions.

(2) Where an order has been made declaring that death is presumed from the fact that the person whose life is insured has not been heard of for seven years, an action or proceeding shall be commenced within one year and six months from the date of the order, but not afterwards. Limitation when death presumed.

(3) Where the death of the person whose life is insured is unknown to the person entitled to claim under the contract, an action or proceeding may be commenced within the prescribed period or within one year and six months after the death becomes known to him whichever period shall first expire but not afterwards. Limitation when death unknown to claimant.

(4) Where an action or proceeding is prematurely brought, the plaintiff may commence a new action or proceeding at any time within six months after the final determination of the first action or proceeding. R.S.O. 1937, c. 256, s. 176. Limitation when action prematurely brought.

186.—(1) The powers conferred upon the insured by this Part with regard to the designation or appointment of a beneficiary or beneficiaries, and the alteration or revocation of such designation or appointment, and the apportionment or Appointment of trustees for beneficiary by insured.

reapportionment of insurance money between or among beneficiaries, shall include power from time to time to appoint a trustee or trustees for any beneficiary or beneficiaries, to revoke such appointment or alter its terms, to appoint a new trustee or trustees, or to make provision for the appointment of a new trustee or trustees.

Effect of
appointment
on
beneficiary.

(2) The appointment of a trustee or trustees for any beneficiary shall not have the effect of taking away from the court or the insured any power of depriving the beneficiary of the benefit of the insurance money which the court or the insured would have under this Act if such beneficiary had been designated as beneficiary without the appointment of a trustee.

Payment to
trustee.

(3) Payment made to the trustee or trustees appointed as hereinbefore provided shall discharge the insurer. R.S.O. 1937, c. 256, s. 177.

Payment of
share of
persons
under
disability.

187.—(1) Where no trustee is appointed to receive the share to which a minor or other person under disability is entitled, or where a trustee is named but refuses or neglects to act or dies or otherwise becomes incapable of acting, the share of the minor or other person under disability may be paid to a guardian or tutor or trustee of the minor or to a curator, committee or trustee of such other person under disability duly appointed under the law of Ontario.

Payment to
parent as
guardian
of minor.

(2) Where insurance money not exceeding \$2,000 is payable to the husband and children or to the wife and children, or to the children of the person whose life is insured, and one or more of the children are minors, the court may, if the wife is the mother of such minors, appoint her their guardian, or if the husband is the father of such minors, appoint him their guardian, with or without security, and the insurance money may be paid to him or her as guardian.

Payment to
person
appointed as
guardian by
foreign court.

(3) Where it appears that a guardian, tutor, curator, committee or trustee of minors or other beneficiaries under disability has been appointed in a foreign jurisdiction, and that the minors or other beneficiaries are resident within that jurisdiction, the court may authorize payment of the insurance money to the guardian, tutor, curator, committee or trustee with or without security in the Province. R.S.O. 1937, c. 256, s. 178.

Payment
by insurer
into court.

188.—(1) Where the insurer admits liability for the insurance money or any part thereof, and it appears to the insurer that,

(a) there are adverse claimants; or

(b) the place of abode of a person entitled is unknown; or

(c) there is no person capable of giving or authorized to give, a valid discharge,

the insurer may, at any time after the expiration of one month from the maturity of the contract, apply to the court for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly, and such application shall in the first instance be made *ex parte*.

(2) Where the insurer admits liability for the insurance money or any part thereof payable to a minor and there is no person capable of giving a valid discharge therefor, the insurer may at any time after the expiration of one month from the maturity of the contract, pay such money, less the costs mentioned in subsection 3, into court to the credit of the minor. R.S.O. 1937, c. 256, s. 179 (1, 2). Where beneficiary a minor.

(3) The insurer may retain out of the insurance money for costs incurred upon payment into court in accordance with subsection 2, \$10 if the amount does not exceed \$1,000, and \$15 in other cases, and payment of the remainder into court shall discharge the insurer. 1948, c. 48, s. 20. Costs.

(4) No order shall be necessary for payment into court under subsection 2, but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Official Guardian and deliver to him a copy of the affidavit. R.S.O. 1937, c. 256, s. 179 (4). Procedure for payment in under subsection 2.

189. Where the insurer does not within two months after due proof of the claim, pay the insurance money to some person competent to receive the same under this Part or into court, the court may, upon application of any person, order that the insurance money, or any part thereof, be paid into court or may make such other order as to the distribution of such money as to the court may seem just, and payment made in accordance with such order shall be a sufficient discharge to the insurer. R.S.O. 1937, c. 256, s. 180. Power of court where insurer fails to pay after proof.

190. The court may fix and ascertain without taxation the costs incurred upon or in connection with any application or order made under subsection 1 of section 188 or under section 189 and may order such costs to be paid out of the Costs of proceedings under ss. 188, 189.

insurance money or by the insurer or the applicant or otherwise as may seem just. 1948, c. 48, s. 21.

Construc-
tion of
Part.

191. This Part shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. R.S.O. 1937, c. 256, s. 182.

PART VI

AUTOMOBILE INSURANCE

Interpre-
tation.

192. In this Part, unless the context otherwise requires,

- (a) "automobile" includes all self-propelled vehicles, their trailers, accessories and equipment, but not railway rolling stock, watercraft or aircraft of any kind;
- (b) "automobile insurance" means insurance against liability for loss or damage to persons or property caused by an automobile or the use or operation thereof, and against loss of or damage to an automobile;
- (c) "contract" includes any writing evidencing a contract, and an oral agreement;
- (d) "driver's policy" means a motor vehicle liability policy insuring a person named therein in respect of the operation or use by him of any automobile other than an automobile owned by him or registered in his name;
- (e) "insured" means a person insured by a contract whether named or not;
- (f) "motor vehicle liability policy" means a policy or that part of a policy insuring the owner or driver of an automobile against liability for loss or damage to persons or property;
- (g) "owner's policy" means a motor vehicle liability policy insuring a person named therein in respect of the ownership, operation or use of any automobile owned by him and designated in the policy;
- (h) "policy" means the instrument evidencing a contract. R.S.O. 1937, c. 256, s. 183.

APPLICATION OF PART

193.—(1) This Part shall apply to automobile insurance and to any insurer carrying on the business of automobile insurance in the Province and to all contracts made in the Province on or after the 1st day of September, 1932. Application of Part.

(2) Nothing in this Part shall prevent the insurance of an automobile against loss or damage by fire under a policy of fire insurance, and in that event this Part shall not apply. Insurance of automobile by fire policy.
R.S.O. 1937, c. 256, s. 184.

(3) This Part, other than section 214, shall not apply to insurance of an automobile chiefly used or operated off highways unless insured under a form of policy approved under this Part. Application of Part. 1946, c. 42, s. 7.

APPLICATION FOR INSURANCE

194.—(1) No insurer shall make any contract for a period exceeding fourteen days without a written application therefor, signed by the applicant or his agent, duly authorized in writing. Contracts to be in writing.

(2) No person carrying on the business of financing the sale or purchase of automobiles, and no automobile dealer, insurance agent or broker, and no officer or employee of any such person, dealer, agent or broker, shall act as agent of the applicant under this section. Persons forbidden to act as agent.

(3) Every written application for a driver's policy shall set forth, Application for driver's policy.

- (a) the name, address and occupation or business of the applicant;
- (b) particulars of any accident in which any automobile operated by the applicant has been involved within the three years preceding the application;
- (c) particulars of any claim made within such period against or by the applicant arising out of the use or operation of an automobile;
- (d) whether any insurer has cancelled any policy of automobile insurance of the applicant or refused automobile insurance to him;
- (e) whether any licence, permit, registration certificate or other like authority, issued to the applicant under any law or statute of any province, state or country

relating to automobiles, has been, or continued to be, suspended or cancelled within the three years preceding the application; and

- (f) such further information as the insurer may require or the Superintendent may prescribe.

Application
in other
cases.

- (4) Every other written application shall set forth,

- (a) the name, address and occupation or business of the owner;
- (b) the description of the automobile to be insured;
- (c) its purchase price to the owner, and whether fully paid or not;
- (d) whether purchased new or otherwise;
- (e) particulars of any mortgage, lien or encumbrance thereon;
- (f) the place where it is and will usually be kept;
- (g) the locality in which and the purpose for which it is and will be chiefly used;
- (h) particulars of any accident in which any automobile owned or operated by the owner has been involved within the three years preceding the application;
- (i) particulars of any claim made within such period against or by the owner arising out of the use or operation of an automobile;
- (j) whether any insurer has cancelled any policy of automobile insurance of the owner, or refused automobile insurance to him;
- (k) whether any licence, permit, registration certificate or other like authority, issued to the owner or a member of his family and household under any law or statute of any province, state or country relating to automobiles, has, to the knowledge of the applicant, been, or continued to be, suspended or cancelled within the three years preceding the application; and
- (l) such further information as the insurer may require or the Superintendent may prescribe.

Special
contracts.

- (5) Where the requirements of subsection 3 or 4 are, in the opinion of the Superintendent, inapplicable to any special form of contract, the Superintendent may prescribe the form of application or vary, omit or add to those requirements.

(6) Upon every written application and policy there shall be printed or stamped in conspicuous type, not less in size than ten point and in red ink, a copy of subsection 1 of section 200. Red ink endorsement.

(7) Where a contract is renewed without change or only the amount of the insurance, the rate of premium or the method of rating is changed, the renewal may be effected without a written application. Renewal of contract.

(8) A copy of the application, or such part thereof as is material to the contract, shall be embodied in, endorsed upon or attached to the policy when issued by the insurer. Copy of application. R.S.O. 1937, c. 256, s. 185.

195. Where it is proposed to change the subject matter of a contract by substitution or addition of one or more automobiles, the insurer may so amend the contract by an endorsement of the policy, but in that case it shall obtain a written application signed in accordance with section 194 and containing such particulars required by that section as relate to the new subject matter. Amendment of contract. R.S.O. 1937, c. 256, s. 186.

POLICY OF INSURANCE

196.—(1) Every policy shall set forth,

Contents of policy.

- (a) the name and address of the insurer;
- (b) the name, address, occupation or business of the insured named therein;
- (c) the premium for the insurance;
- (d) the subject matter of the insurance;
- (e) the indemnity for which the insurer may become liable;
- (f) the event on the happening of which liability is to accrue;
- (g) the term of the insurance; and
- (h) except in case of motor vehicle liability policies, the name of the person to whom the insurance money is payable.

(2) Unless otherwise expressly stated therein, any written application shall be deemed to be one for a policy embodying the terms and conditions of the insurer's corresponding standard policy form approved under this Part, and the policy shall be deemed to be in accordance with the application unless Discrepancy between the application and the policy.

the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and, in that event, the insured shall be deemed to have accepted the policy unless within one week from the receipt of the notification he informs the insurer in writing that he rejects the policy.

Insured
entitled to
copy.

(3) Notwithstanding any agreement, the insurer shall deliver or mail to the insured named therein the policy or a true copy thereof and every endorsement or amendment of the policy or a true copy thereof. R.S.O. 1937, c. 256, s. 187.

Statutory
conditions.

197.—(1) Subject to subsections 2 and 3 and sections 198 and 216,

(a) the conditions set forth in this section shall be statutory conditions and deemed to be part of every contract of automobile insurance and shall be printed on every policy with the heading "Statutory Conditions";

(b) no variation or omission of a statutory condition shall be valid nor shall anything contained in any addition to a statutory condition or in the description of the subject matter of the insurance be effective in so far as it is inconsistent with, varies or avoids any such condition.

When special
condition
may be
made.

(2) Where the automobile insurance is neither insurance under a motor vehicle liability policy nor insurance against loss of or damage to an automobile designated in the policy, the Superintendent may prescribe appropriate conditions or may omit, vary or add to the statutory conditions.

Where use
of vehicle is
restricted.

(3) The Superintendent may approve a form of motor vehicle liability policy appropriate to insure a limited or restricted use of the automobile and in that case the statutory conditions shall be deemed to be amended so far as is necessary to give effect to the terms and conditions of the policy so approved and sections 207 and 208 shall not apply. R.S.O. 1937, c. 256, s. 188.

STATUTORY CONDITIONS

Material Change in Risk 1. (a) The insured named in the policy shall promptly notify the insurer, or its local agent, in writing, of any change in the risk material to the contract and within his knowledge.

(b) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" shall include:—

Sale

(i) any change in the insurable interest of the insured named in the policy in the automobile by sale,

assignment or otherwise, except through change of title by succession, death or proceedings under *The Bankruptcy Act*;

Mortgage or Lien and in cases other than motor vehicle liability policies:

(ii) any mortgage, lien or encumbrance affecting the automobile after the application for the policy;

Other Insurance (iii) any other insurance of the same interest, whether valid or not, covering loss or damage insured by the policy or any portion thereof.

Prohibited Use by Insured 2.—(1) The insured shall not drive or operate the automobile:

(a) whilst under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or

(b) unless he is for the time being either authorized by law or qualified to drive or operate the automobile, or while he is under the age of sixteen years or under such other age as is prescribed by the law of the province where he resides at the time the policy is issued; or

(c) for any illicit or prohibited trade or transportation; or

(d) in any race or speed test.

Prohibited Use by Others (2) The insured shall not permit, suffer, allow or connive at the use of the automobile:

(a) by any person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or

(b) by any person, unless such person is for the time being either authorized by law or qualified to drive or operate the automobile, or while such person is under the age of sixteen years or under such other age as is prescribed by law; or

(c) for any illicit or prohibited trade or transportation; or

(d) in any race or speed test.

Uses Prohibited Without Permission 3. Unless permission is expressly given by an endorsement of the policy and in consideration of an additional stated premium, the automobile shall not be rented or leased nor shall it be used:—

Trailer (a) with trailer attached where:

(i) the automobile is of other than the private passenger type; or

(ii) the automobile is of the private passenger type and the trailer is a cabin trailer, trailer home, or other trailer while such other trailer is being used for business, passenger-carrying or commercial purposes; or

Explosives (b) to carry explosives; or

Taxicab or Bus (c) as a taxicab, public omnibus, livery, jitney, or sight-seeing conveyance or for carrying passengers for compensation or hire.

**Liability
In War**

4. In cases other than motor vehicle liability policies, the insurer shall not be liable for loss or damage that is caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operations of armed forces while engaged in hostilities, whether war be declared or not, or by civil commotion arising from any of the foregoing, unless the policy or an endorsement thereon expressly provides otherwise.

**Loss or Damage
to Persons or
Property****Insured to Give
Notice of Acci-
dent and Claim**

5.—(1) The insured shall promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property, and of any claim made on account of accident; shall verify by affidavit or statutory declaration, if required by the insurer, that the claim arises out of the operation or use of an automobile described in the policy and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured by the policy; and shall forward immediately to the insurer every writ, letter, document or advice received by him from or on behalf of the claimant.

**Co-operation of
Insured and
Insurer in Claim
Settlement**

(2) The insured shall not voluntarily assume any liability or settle any claim except at his own cost. The insured shall not interfere in any negotiations for settlement or in any legal proceeding but, whenever requested by the insurer, shall aid in securing information and evidence and the attendance of any witness, and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

**Loss or Damage
to the
Automobile****Insured to
give Notice
of Claim**

6.—(1) Upon the occurrence of any loss of or damage to the insured automobile, the insured shall, if such loss or damage is covered by this policy:

(a) forthwith give notice thereof, in writing, to the insurer, with fullest information obtainable at the time, and shall, at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable hereunder. No repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the insurer, except such repairs as are immediately necessary for the protection of the automobile from further loss or damage; or until the insurer has had a reasonable time to make the examination provided for in statutory condition 8.

Proof of Loss

(b) deliver to the insurer within ninety days of the date of the loss or damage a statutory declaration stating, so far as the insured knows or believes, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile, and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

**Examination
of Insured**

(2) The insured shall submit to examination under oath, and shall produce for examination, at such reasonable place as is designated by the insurer or its representative, all documents in his possession or control which relate to the matters in question, and shall permit extracts and copies thereof to be made.

**Insurer Liable
For Cash Value
of Automobile**

(3) The insurer shall not be liable beyond the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash

value with proper deduction for depreciation, however caused, and shall in no event exceed what it would cost to repair or replace the automobile or any part thereof with material of like kind and quality; provided that in the event of any part of the automobile being obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of such part at the time of loss or damage not exceeding the maker's last list price.

Repairs

(4) Except where an appraisal has been had, the insurer, instead of making payment may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality, giving written notice of its intention so to do within seven days after the receipt of the proofs of loss; but there can be no abandonment of the automobile to the insurer without its consent. In the event of the insurer exercising such option, the salvage, if any, shall revert to it.

In Case of Disagreement

(5) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, such questions shall be determined by appraisers before recovery can be had hereunder, whether the right to recover on the policy is disputed or not, and independently of all other questions.

Appraisal

(6) The insured and the insurer shall each select one appraiser, and the two so chosen shall then select a disinterested umpire. Thereafter the two appraisers together shall estimate or appraise the loss or damage, stating separately sound value and damage, or determine the adequacy of such repairs or replacements, and, failing to agree, shall submit their differences to the umpire.

Appointment of Appraisers

(7) In case either party fails to name an appraiser within seven clear days after being served with written notice so to do, or in case the appraisers fail to agree upon an umpire within fifteen days after their appointment, or in case an appraiser or umpire refuses to act or is incapable of acting, or dies, a Judge of a Superior, County or District Court having jurisdiction in the county or district in which the appraisal is to be made may appoint such appraiser or umpire on the application of the insured or of the insurer.

Award

(8) An award in writing of the two appraisers, or of one appraiser and the umpire, shall determine the nature and extent or adequacy of the repairs and replacements made or required, or the amount of such loss or damage.

Costs of Appraisal

(9) Each party shall pay the appraiser selected by him and shall bear equally the other expenses of the appraisal and of the umpire.

Waiver

7. Neither the insurer nor the insured shall be deemed to have waived any term or condition of this policy by any act relating to the appraisal or to the delivery and completion of proofs of loss, or to the investigation or adjustment of the claim.

Inspection of Automobile

8. The insurer shall be permitted at all reasonable times to inspect the automobile and its equipment.

Other Insurance of the Same Interest

9.—(1) If the insured named in the policy has or places any additional or other valid insurance of his interest in the subject matter of the contract or any part thereof the insurer shall be liable only for its rateable proportion of any loss or damage.

(2) Where by any other valid insurance indemnity is provided for a claim under this policy against a person not named herein but insured hereby, the insurer shall only be liable under this policy, in respect of any

such claim, to the extent of any deficiency in the amount of such other insurance of such claim, not exceeding in any event the limits of liability of the insurer under this policy.

Time and Manner of Payment of Insurance Money 10.—(1) An insurer shall pay the insurance money for which it is liable under a contract within sixty days after the proof of loss has been received by it, or, where an appraisal is had under statutory condition 6, within fifteen days after the award is rendered by the appraisers.

When Action May be brought (2) The insured may not bring an action to recover the amount of a claim under the policy unless the requirements of statutory conditions 5 and 6 are complied with nor until the amount of the loss has been ascertained as therein provided, or by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

Limitation of Actions (3) Every action or proceeding against an insurer under a contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose, and not afterwards.

Who May Give Notice and Proofs of Claim 11. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in the policy in case of absence or inability of such insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for, or in the like case, or if such insured refuses to do so, by a person to whom any part of the insurance money is payable.

Cancellation 12.—(1) The policy may be cancelled at any time at the request of the insured named therein, and the insurer shall, upon surrender of the policy, refund the excess of paid premium above the customary short rate premium for the time the policy has been in force.

(2) This policy may be cancelled at any time by the insurer giving to the insured named in the policy fifteen days notice in writing of cancellation by registered post, whether registered within or without Canada, or five days notice of cancellation personally delivered, and refunding the excess of paid premium beyond the *pro rata* premium for the expired time. Repayment of excess premiums may be made by money, post office order, postal note or cheque. Such repayment shall accompany the notice, and in such case the fifteen days above-mentioned shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

(3) In this condition the expression "paid premium" means premium actually paid by the insured to the insurer or its agent, and does not include any premium or part thereof paid to the insurer by an agent unless actually paid to the agent by the insured.

Notice 13. Any written notice to the insurer may be delivered at or sent by registered post to the chief agency or head office of the insurer in this Province. Written notice may be given to the insured named in the policy by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the insurer, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received. In this condition the expression "registered" shall mean registered within or without Canada.

R.S.O. 1937, c. 256, s. 188, *cons.*; 1942, c. 22, s. 6; 1948, c. 48, s. 23.

198.—(1) If the policy does not insure against liability for loss or damage to persons or property, statutory condition 5 shall not be deemed to be part of the policy. Certain conditions not part of policy.

(2) If the policy does not insure against loss of or damage to an automobile, statutory condition 6 shall not be deemed to be part of the policy. Idem. R.S.O. 1937, c. 256, s. 189.

199.—(1) No insurer shall issue or deliver a policy in the Province until a copy of the form of policy has been on file with the Superintendent for at least thirty days, unless sooner approved in writing by him, nor if within that period the Superintendent notifies the insurer in writing that the said form of policy is not approved. Policy to be approved by Superintendent.

(2) The Superintendent shall, on being so required, specify the reasons for not approving or for disapproving thereof. Superintendent to give reasons for disapproval. R.S.O. 1937, c. 256, s. 190.

200.—(1) Where an applicant for a contract falsely describes the automobile to be insured, to the prejudice of the insurer, or knowingly misrepresents or fails to disclose in the application any fact required to be stated therein or where the insured violates any term or condition of the policy or commits any fraud, or makes any wilfully false statement with respect to a claim under the policy, any claim by the insured shall be rendered invalid and the right of the insured to recover indemnity shall be forfeited. Misrepresentation or violation of conditions renders claim invalid.

(2) Where a written application for a contract is made, no statement of the applicant shall be used in defence of a claim under the policy, unless it is contained in the written application. No defence where statement not in written application. R.S.O. 1937, c. 256, s. 191.

201. Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss, and a consequent forfeiture or avoidance of the insurance in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it may deem just. Relief from forfeiture. R.S.O. 1937, c. 256, s. 192.

202. Insurance money shall be payable in the Province in lawful money of Canada. How policy payable. R.S.O. 1937, c. 256, s. 193.

203. No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part, unless the waiver Waiver.

is stated in writing and signed by an agent of the insurer. R.S.O. 1937, c. 256, s. 194.

Subrogation.

204.—(1) The insurer, upon making any payment or assuming liability therefor under a contract of automobile insurance, shall be subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce such rights. R.S.O. 1937, c. 256, s. 195 (1); 1943, c. 28, s. 20.

Where amount recovered is not sufficient to indemnify.

(2) If the net amount recovered, after deducting the costs of such recovery is not sufficient to provide a complete indemnity for the loss or damage suffered, such amount shall be divided between the insurer and the insured in the proportions in which such loss or damage has been borne by them respectively. R.S.O. 1937, c. 256, s. 195 (2).

Use of red ink.

205. No red ink shall be used in printing a policy, except for the name, address and emblem of the insurer, the policy number and for the purposes mentioned in this Part. R.S.O. 1937, c. 256, s. 196.

Rights of insured preserved.

206. Any act or omission of the insurer resulting in non-compliance or imperfect compliance with any of the provisions of this Part shall not render a contract invalid as against the insured. R.S.O. 1937, c. 256, s. 197.

MOTOR VEHICLE LIABILITY POLICIES

Coverage of owner's policy.

207.—(1) Every owner's policy shall insure the person named therein, and every other person who, with his consent, uses any automobile designated in the policy, against the liability imposed by law upon the insured named therein or upon any such other person for loss or damage,

- (a) arising from the ownership, use or operation of any such automobile within Canada or the United States of America, or upon a vessel plying between ports within those countries; and
- (b) resulting from,
 - (i) bodily injury to or death of any person, or
 - (ii) damage to property, or
 - (iii) both.

Rights of unnamed insured.

(2) Any person insured by but not named in a policy may recover indemnity in the same manner and to the same extent

as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor. R.S.O. 1937, c. 256, s. 198.

208. Every driver's policy shall insure the person named therein against the liability imposed by law upon such insured for loss or damage, ^{Coverage of driver's policy.}

- (a) arising from the operation or use by him of any automobile, other than an automobile owned by or registered in the name of such insured, while he is personally in control as driver or occupant of such automobile within Canada or the United States of America, or upon a vessel plying between ports within those countries; and
- (b) resulting from,
 - (i) bodily injury to or death of any person, or
 - (ii) damage to property, or
 - (iii) both. R.S.O. 1937, c. 256, s. 199.

209. Under an owner's policy or a driver's policy the insurer shall, ^{Additional agreements.}

- (a) upon receipt of notice of loss or damage caused to persons or property, serve the insured by such investigation thereof, or by such negotiations with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the insurer; and
- (b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action which may at any time be brought against the insured on account of loss or damage to persons or property; and
- (c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limits of the insurer's liability; and
- (d) in case the injury be to a person, reimburse the insured for outlay for such medical aid as may be immediately necessary at the time. R.S.O. 1937, c. 256, s. 200.

Exceptions
from
liability.

210. The insurer shall not be liable under an owner's policy or a driver's policy,

- (a) for any liability imposed by any workmen's compensation law upon the insured; or
- (b) for loss or damage resulting from bodily injury to or the death of the insured or the son, daughter, wife, husband, mother, father, brother or sister of the insured;

or, unless the coverage is expressly extended under section 212,

- (c) to any person, not the owner of the automobile, engaged in the business of an automobile garage, repair shop or service station or as an automobile dealer, for loss or damage sustained while engaged in the operation or repair of the automobile; or
- (d) for any loss or damage resulting from bodily injury to or the death of any person being carried in or upon or entering or getting on to or alighting from the automobile; or
- (e) for loss or damage to property carried in or upon the automobile or owned by, or in the care, custody or control of the insured; or
- (f) for loss or damage resulting from bodily injury to or the death of any employee of the insured while engaged in the operation or repair of the automobile.
R.S.O. 1937, c. 256, s. 201; 1946, c. 42, s. 8.

Minimum
liability
under policy.

211. Every owner's policy and driver's policy shall insure, in case of bodily injury or death, to the limit of at least \$5,000 (exclusive of interest and costs) against loss or damage resulting from bodily injury to or the death of any one person, and, subject to such limit, for any one person so injured or killed, of at least \$10,000 (exclusive of interest and costs) against loss or damage resulting from bodily injury to or death of two or more persons in any one accident, or, in case of property damage, to the limit of at least \$1,000 (exclusive of interest and costs) for damage to property resulting from any one accident. R.S.O. 1937, c. 256, s. 202.

Extended
coverage.

212. The insurer may, by an endorsement on the policy and in consideration of an additional stated premium, and not otherwise, extend the coverage in whole or in part in any or all of the following respects,

- (a) in the case of an owner's policy or a driver's policy, the matters mentioned in clauses *c*, *d*, *e* and *f* of section 210; and
- (b) in the case of an owner's policy, the operation or use of automobiles not owned by nor registered in the name of the insured; and
- (c) in the case of an owner's policy or a driver's policy, such other matters as may be approved by the Superintendent. R.S.O. 1937, c. 256, s. 203; 1946, c. 42, s. 9.

213. Where any provision of sections 207 to 212 is in- Policy in special cases.
 applicable by reason of the requirements of any Act or, in the opinion of the Superintendent, unsuitable to any special form of contract, he may approve a form of motor vehicle liability policy sufficient or appropriate to insure the risks required or proposed to be insured and in that case those sections shall not apply. R.S.O. 1937, c. 256, s. 204.

214.—(1) Any person having a claim against an insured, Application of insurance money under motor vehicle liability policy.
 for which indemnity is provided by a motor vehicle liability policy, shall, notwithstanding that such person is not a party to the contract, be entitled, upon recovering a judgment therefor against the insured, to have the insurance money payable under the policy applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the indemnity and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) No creditor of the insured shall be entitled to share in the insurance money payable under any such policy in respect of any claim for which indemnity is not provided by the policy. Other creditors not entitled to share.

- (3) (i) No assignment, waiver, surrender, cancellation or discharge of the policy, or of any interest therein or of the proceeds thereof, made by the insured after the happening of the event giving rise to a claim under the policy, and Insurer absolutely liable.
- (ii) no act or default of the insured before or after such event in violation of the provisions of this Part or of the terms of the contract, and
- (iii) no violation of the *Criminal Code* (Canada) or of R.S.C. 1927, c. 36.
 any law or statute of any province, state or country, by the owner or driver of the automobile,

shall prejudice the right of any person, entitled under subsection 1, to have the insurance money applied upon his judgment or claim, or be available to the insurer as a defence to such action. R.S.O. 1937, c. 256, s. 205 (1-3).

Section
applicable
to purported
policy.

(4) It shall not be a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer, and alleged by a party to the action to be such a policy, is not a motor vehicle liability policy, and this section shall apply, *mutatis mutandis*, to the instrument. 1947, c. 51, s. 3.

Contribu-
tion among
insurers.

(5) The insurer may require any other insurers liable to indemnify the insured in respect of judgments or claims referred to in subsection 1 to be made parties to the action and to contribute rateably according to their respective liabilities, and the insured shall, on demand, furnish the insurer with particulars of all other insurance covering the subject matter of the contract. R.S.O. 1937, c. 256, s. 205 (4).

Defence
where excess
or extended
coverage.

(6) Subject to subsection 7 where a policy provides for coverage in excess of the limits mentioned in section 211 or for extended coverage in pursuance of section 212, nothing in this section shall, with respect to such excess coverage or extended coverage, prevent the insurer from availing itself, as against any claimant, of any defence which the insurer is entitled to set up against the insured. R.S.O. 1937, c. 256, s. 205 (5); 1944, c. 58, s. 6 (1).

Extended
coverage,
where
subs. 6
to apply.

(7) Where a policy provides for extended coverage in respect of loss or damage resulting from bodily injury to, or the death of, any person being carried in or upon, or entering, or getting on to, or alighting from, an automobile operated in the business of carrying passengers for compensation or hire subsection 6 shall apply only to that part of such extended coverage,

(a) which exceeds any minimum coverage required by this Act; or

(b) where a greater minimum coverage is required by or pursuant to any other Act of, or in force in, the Province, which exceeds such greater minimum coverage. 1944, c. 58, s. 6 (2).

Liability
of insured to
reimburse
insurer.

(8) The insured shall be liable to pay or reimburse the insurer, upon demand, any amount which the insurer has paid by reason of this section which it would not otherwise be liable to pay. R.S.O. 1937, c. 256, s. 205 (6).

(9) Where an insurer denies liability under a motor vehicle liability policy it shall have the right upon application to the court to be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action for which it is or might be asserted that indemnity is provided by the said policy, whether or not the insured enters an appearance or defence in such action, and upon being made a third party such insurer shall have the right to contest the liability of the insured to any party claiming against the insured, and to contest the amount of any claim made against the insured to the same extent as if a defendant in the action, including for such purpose the right to deliver a statement of defence to the claim of any party claiming against the insured and to deliver other pleadings and to have production and discovery from any party adverse in interest and the right to examine and cross-examine witnesses at the trial. 1944, c. 58, s. 6 (3).

Insurer may
be made
third party.

215. Every insured against whom an action is commenced for damages occasioned by an automobile shall,

Insured to
give notice
of action
and disclose
insurance.

- (a) give notice thereof in writing to the insurer within five days after service of notice or process in the action; and
- (b) disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such policy within ten days after written demand therefor. R.S.O. 1937, c. 256, s. 206.

POLICIES OTHER THAN MOTOR VEHICLE LIABILITY POLICIES

216. A policy, other than a motor vehicle liability policy, may contain a clause to the effect that the insurer in the event of loss shall pay only an agreed portion of any loss which may be sustained or the amount of the loss after deduction of a sum specified in the policy, in either case not exceeding the amount of the insurance, in which case there shall be printed upon the face of the policy in conspicuous type, in red ink, the words, "This policy contains a partial payment of loss clause." R.S.O. 1937, c. 256, s. 207.

Partial
payment of
loss clause.

217. Where a claim is made under any policy other than a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the policy as well as with any person having an interest indicated in the policy. R.S.O. 1937, c. 256, s. 208.

Claims to
be adjusted
with insured.

PART VII

ACCIDENT AND SICKNESS INSURANCE

Application. **218.**—(1) This Part shall apply to accident and sickness insurance and to an insurer undertaking accident and sickness insurance in the Province but shall not apply to any fraternal society or to its contracts.

Disability insurance. (2) This Part shall not apply to a contract of life insurance to which Part V applies, notwithstanding that such contract includes provisions for special benefits or indemnities upon death by accident, or upon disability which is by the terms of the contract deemed to be total and permanent, or upon total disability which exists for a continuous period of not less than three months or ninety days, according as the contract may provide.

Provisions governing accident insurance contracts. (3) Subject to subsection 2, contracts insuring against death by accident and not against death from other causes, shall be deemed to be accident insurance contracts within the meaning of this Part and not life insurance contracts within the meaning of Part V.

Group insurance. (4) This Part, except section 226, shall not apply to a contract made with an employer and insuring his employees or made with a representative of a group and insuring such group for the individual benefit of the employees or persons insured thereby, but sections 135, 150 to 154 and 183 shall apply to any such contract.

Application of Part V. (5) Sections 135, 150 to 155 and 183 and no other provision contained in Part V shall apply to contracts to which this Part applies. R.S.O. 1937, c. 256, s. 209.

Delivery of policy. **219.**—(1) Where the contract of insurance has been delivered it shall be as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

Right where premium unpaid. (2) The insurer may sue for the unpaid premium and may deduct the same from the amount for which he may become liable under the contract.

Where note for premium not paid. (3) Where the premium is paid by a cheque or a promissory note and the cheque is not paid on presentation or the promissory note at maturity the contract shall at the option of the insurer be voidable. R.S.O. 1937, c. 256, s. 210.

220.—(1) Every policy shall contain the name and address of the insurer, the name and address and occupation or business of the insured, the name of the person to whom the insurance money is payable, the premium for the insurance, the indemnity for which the insurer may become liable, the event on the happening of which such liability is to accrue, and the term of the insurance. R.S.O. 1937, c. 256, s. 211. Contents of policy.

(2) A contract may be renewed by the delivery of a renewal receipt, identifying the policy by number, date or otherwise. R.S.O. 1937, c. 22, s. 2. Renewal of contract.

221. The conditions set forth in this section shall be deemed, subject to sections 222 to 224, to be part of every contract of accident and of sickness insurance in force in Ontario, and shall be printed on every policy issued under the heading "Statutory Conditions". R.S.O. 1937, c. 256, s. 212. Statutory conditions.

STATUTORY CONDITIONS

The Contract 1. This policy, including the endorsements and attached papers, if any, contains the entire contract of insurance except as it may be modified by the Insurer's classification of risks and premium rates as provided by condition 3.

Material Facts 2. All statements made by the insured upon the application for this policy shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defense of a claim under this policy unless it is contained in the written application for the policy and unless a copy of the application, or such part thereof as is material to the contract, is endorsed upon or attached to the policy when issued.

Change to More Hazardous Occupation 3. If a *bodily injury or any sickness* insured against happens to the insured while engaged temporarily or permanently in an occupation classified as more hazardous than that stated herein to be the occupation of the insured, the liability under this policy shall be limited to such amount as the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates of the insurer last filed with the Superintendent of Insurance; provided that the performance of ordinary duties about his residence or while engaged in recreation shall not be regarded as a change of occupation by the insured.

Change to Less Hazardous Occupation 4. If the insured shall, at any time, change his occupation either temporarily or permanently to an occupation classified by the insurer as less hazardous than that stated in the policy to be the occupation of the insured, the insurer shall, upon written request of the insured and surrender of this policy, issue a policy for the unexpired term at the lower rate of premium applicable to such less hazardous occupation, and the insurer shall return to the insured the amount by which the unearned premium on the original policy exceeds the premium charge at such lower rate for the unexpired term.

Commencement of Contract 5. Unless otherwise specifically stated in this policy, the insurer is not liable for any loss occasioned by sickness contracted by the insured within fifteen days from noon, standard time, of the day on which the policy comes into force.

Limited Liability of Insurer

6. If the *accident or sickness* benefits for loss of time secured hereunder, together with the *accident or sickness* benefits payable under other contracts of insurance upon the person of the insured, make up an aggregate indemnity in excess of the money value of the time of the insured, the insurer shall be liable only for such proportion of the benefits stated in this policy as the money value of the time of the insured bears to the aggregate of the benefits payable under all such contracts on the person of the insured, and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

Notice to Insurer

7. Any written notice to the insurer may be delivered at or sent by registered post to the chief agency or head office of the insurer in the province or delivered or sent to any authorized agent of the insurer therein.

Notice to Insured

8. Any written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the insurer, or where not notified and the address is not known, addressed to him at the agency, if any, at which the application was received.

Termination by Insurer

9. The insurance may be terminated by the insurer at any time by giving to the insured ten days notice of cancellation by registered mail or five days notice of cancellation personally delivered to the insured and refunding in either case the excess of paid premium beyond the *pro rata* premium for the expired time.

Termination by Insured

10. The insurance may be terminated by the insured at any time by giving written notice of termination to the insurer, in which case the insurer shall, upon surrender of this policy, refund the excess of paid premium beyond the customary short rate for the expired time.

Repayment of Excess Premium

11. In the case of termination of the insurance by the insurer, repayment of the excess premium may be made in money, by post office order, postal note or cheque payable at par, certified by a chartered bank doing business in the province. If the notice is given by registered letter, such repayment shall accompany the notice, and, in such case, the ten days mentioned in condition 9 shall commence to run from the day following the receipt of a registered letter at the post office to which it is addressed.

Notice and Proof of Claim

12. Any person entitled to make a claim under this policy shall:

- (a) give notice of claim in writing to the insurer not later than thirty days *from the date of the accident or from the date of the commencement of disability from sickness*; provided that failure to give notice shall not invalidate the claim if it is shown that it was not reasonably possible to give such notice within such time, and that notice was given as soon as was reasonably possible;
- (b) furnish to the insurer such proof of claim as is reasonably possible in the circumstances of the happening of the *accident or sickness* and the loss occasioned thereby, *within ninety days after the happening of the accident, or, in the case of sickness, within ninety days after the date of commencement of the period of disability from sickness for which the insurer is liable*;
- (c) if so required by the insurer, furnish a certificate from a licensed medical practitioner as to the cause and nature of the *accident or sickness* for which the claim is made and as to duration of the disability caused thereby.

**Insurer to
Furnish
Forms for
Proof of
Claim**

13. The insurer shall, upon receiving notice of accident or sickness, furnish to the claimant such forms as are usually furnished by them for proofs of claim, and if such forms are not so furnished within fifteen days after receipt of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of claim if he submits, within the time fixed in this policy for filing such proofs, a written statement of the happening and character of the *accident or sickness* and of the extent of the loss for which the claim was made.

**Right of
Examination**

14. The insurer shall have the right, and the claimant shall afford to the insurer an opportunity, to examine the person of the insured when and as often as it may reasonably require while the claim hereunder is pending, and also, in the case of death of the insured, to make an autopsy subject to any law of the province relating to autopsies.

**Claimant
Other Than
Beneficiary**

15. Any claim made under this policy by a claimant other than the beneficiary named in the policy shall be subject to proof of the interest of the claimant.

**Who May
Give Notice
and Proofs
of Claim**

16. Notice of claim may be given and proofs of claim may be made by the agent of the insured, or of the beneficiary in case of the absence of the insured or beneficiary, or in case of inability of the insured or the beneficiary to give the notice or make the proof, such absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

**When Moneys
Other Than
for Disability
Payable**

17. All moneys payable under this policy for loss other than that of time on account of disability shall be paid within sixty days after the receipt of proofs of claim.

**When
Indemnity
on Account
of Disability
Payable**

18. The indemnity for loss of time on account of disability shall be paid within thirty days after proof of claim and, as long as the insurer remains liable for the disability, at the expiration of every succeeding sixty days; provided that the insurer may, in case the disability continues, require proof thereof for each such period of sixty days, which proof shall be furnished within ninety days after the termination of each period in respect of which the claim is made.

**Right of
Insured to
Assign Policy**

19. Where moneys are payable under this policy upon the death of the insured by accident, the insured may from time to time designate a beneficiary, appoint, appropriate or apportion such moneys and alter or revoke any prior designation, appointment, appropriation or apportionment.

Waiver

20. The insurer shall not be deemed to have waived any condition of this policy, either in whole or in part, unless the waiver is clearly expressed in writing, signed by the insurer.

**Limitation
of Actions**

21. Any action or proceeding against the insurer for the recovery of any claim under this policy shall be commenced within one year after the cause of action arose.

R.S.O. 1937, c. 256, s. 212, *cons.*

222.—(1) If the policy does not insure against accident, the words of conditions numbers 3, 6, 12 and 13 relating to accident and printed in italics may be omitted from the policy. Certain conditions to be omitted from policy in special cases.

Idem.

(2) If the policy does not insure against sickness, condition number 5, and also the words of conditions numbers 3, 6, 12 and 13, relating to sickness and printed in italics, may be omitted from the policy.

Idem.

(3) If the policy provides that the contract may not be terminated by the insurer at any time, the conditions numbered 9, 10 and 11 may be omitted from the policy. R.S.O. 1937, c. 256, s. 213 (1-3).

Special cases.

(4) If, in the opinion of the Superintendent, any condition or any part of a condition is not suitable having regard to the nature of the contract, the insurer may, with the approval of the Superintendent, omit the condition or part of a condition from the policy. 1948, c. 48, s. 24.

Proviso.

(5) If an entire condition is omitted pursuant to this section, there shall be inserted after the condition number the following words within brackets ("*This condition is not applicable to this policy and is omitted pursuant to statute*"). R.S.O. 1937, c. 256, s. 213 (5).

Statutory conditions, notice as to.

223. Where a policy of accident insurance is issued through the agency of a transportation corporation that holds a licence issued under section 290, the statutory conditions set out in section 221 need not be printed on the policy if the policy contains the following notice printed in conspicuous type: "Notwithstanding any other provision herein contained this policy is subject to the statutory conditions respecting contracts of accident insurance". 1948, c. 48, s. 25.

Variations in conditions.

224.—(1) If an insurer desires to vary, omit, or add to the statutory conditions or any of them, except as provided in sections 222 and 223, there shall be printed in conspicuous type not less in size than ten point, and in red ink, immediately after such conditions, the proposed variations or additions or a reference to the omissions, with these introductory words:

"Variations in Conditions"

"This policy is issued on the above statutory conditions with the following variations, omissions or additions, which are, by virtue of the law of this Province, in force so far only as they shall be held to be just and reasonable to be exacted by the insurer."

Effect of variations.

(2) No variation, omission or addition except as provided in sections 222 and 223 shall be binding upon the insured unless the foregoing provisions of this section have been complied with, and any variation, omission or addition shall

be so binding only in so far as it is held by the court before which a question relating thereto is tried, to be just and reasonable. R.S.O. 1937, c. 256, s. 215.

225. No red ink shall be used on the face of a policy except the name, address and emblem of the insurer, and the policy number, and for the purposes mentioned in this Act. R.S.O. 1937, c. 256, s. 216. Use of red ink.

226. In any case where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or as to any matter or thing to be done or omitted by the insured after the maturity of the contract, and a consequent forfeiture or avoidance of the insurance in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it may deem just. R.S.O. 1937, c. 256, s. 217. Relief from forfeiture.

PART VIII

LIVE STOCK INSURANCE

227. This Part shall apply to live stock insurance and to any insurer carrying on the business of live stock insurance in the Province. R.S.O. 1937, c. 256, s. 218. Application of Part.

228. Every insurer licensed for the transaction of live stock insurance may, within the limits and subject to the conditions prescribed by the licence, insure against loss of live stock, by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion of any enemy or by insurrection. R.S.O. 1937, c. 256, s. 219. Property which may be insured.

229. The following provisions of Part IV shall apply to live stock insurance contracts, Application of provisions as to fire insurance.

- (a) the provisions as to the form and contents of the policy;
- (b) the provisions as to the conditions including the statutory conditions, except where inapplicable to the nature of the risk;
- (c) the provisions relating to premium notes and assessments other than sections 116, 117 and 126, when the insurance is on the premium note plan. R.S.O. 1937, c. 256, s. 220.

Term of
contract.

230.—(1) Contracts of insurance shall not in any case exceed the term of two years.

Renewing
policies.

(2) A contract made for one year or any shorter period may be renewed from time to time at the discretion of the directors by renewal receipt instead of by policy, on the assured paying the required premium or giving his premium note, and all payments or renewal by cash or premium notes shall be made at or before the end of the period for which the policy was granted or renewed, otherwise the policy shall be void.

Premium
note.

(3) No premium note taken under any contract of insurance shall exceed forty per cent or be less than ten per cent per annum of the sum insured, and no renewal receipt shall extend the contract beyond two years from the date of the policy. R.S.O. 1937, c. 256, s. 221.

PART IX

WEATHER INSURANCE

Application
of Part.

231. This Part shall apply to weather insurance and to any insurer carrying on the business of weather insurance in the Province, but shall not apply to weather insurance provided by an endorsement to a contract of fire insurance. R.S.O. 1937, c. 256, s. 222; 1942, c. 22, s. 7.

What may
be insured.

232. Every insurer licensed for the transaction of weather insurance may, within the limit and subject to the conditions prescribed by the licence, insure against such atmospheric disturbances, discharges or conditions as the contract of insurance shall specify. R.S.O. 1937, c. 256, s. 223.

Application
of certain
provisions
as to fire
insurance.

233.—(1) The following provisions of Part IV shall apply to weather insurance contracts:

- (a) the provisions as to the form and contents of the policy;
- (b) the provisions as to conditions, including the statutory conditions, except where inapplicable to the nature of the risk;
- (c) the provisions relating to premium notes and assessments other than sections 116, 117 and 126, where the insurance is on the premium note plan.

Additional
conditions.

(2) The following additional conditions shall form part of every weather insurance contract:

- (i) the insurance may be terminated by the insurer by giving seven days notice to that effect, Termination.
- (ii) the insurer is not liable for loss or damage occurring to buildings or structures or to their respective contents where the buildings or structures have been weakened by subsequent alterations unless permission to make such alterations has been previously granted in writing signed by a duly authorized agent of the insurer. Where buildings weakened by alterations made without consent. R.S.O. 1937, c. 256, s. 224.

234. A contract of weather insurance shall not in any case exceed the term of three years. R.S.O. 1937, c. 256, s. 225. Term of contract.

235. On every premium note taken by the insurer there shall be payable at the commencement of each year of insurance a cash payment amounting to at least one-fifth of one per cent of the sum insured or *pro rata* when the cash payment is paid in advance for a longer term, and the premium note shall, as to the balance thereof, be subject to assessment by the directors; provided that when the amount of insurance in force exceeds \$3,000,000 and the total assets of the company do not fall below two per cent of the total amount at risk, the Superintendent may authorize the reduction of the cash payment to one-eighth of one per cent of the sum insured per annum, or *pro rata* for a longer term. R.S.O. 1937, c. 256, s. 226. Premium note.

PART X

FRATERNAL SOCIETIES

236. In this Part,

1. "actuary" means a Fellow of the Society of Actuaries, or of the Institute of Actuaries of Great Britain, or of the Faculty of Actuaries in Scotland, provided however, that an actuary who, for a period of not less than five years preceding the 2nd day of July, 1921, had been serving a licensed fraternal society transacting business in Ontario on that date as its actuary, and who had been in active practice as an actuary for a period of not less than twenty-five years prior to that date, may for the purpose of this Act, with the consent of the Superintendent, be continued as an actuary of any such society by which at that date he was employed as actuary;
2. "rates of contribution" means the regular net premiums, dues, rates or contributions receivable from

Interpretation.

the members for the purpose of the payment at maturity of the society's certificates or contracts of insurance;

3. "society" means fraternal society. R.S.O. 1937, c. 256, s. 227; 1939, c. 22, s. 4; 1950, c. 31, s. 2, *amended*.

Application
of Part.

237.—(1) Subject to subsection 2, this Part shall apply to all fraternal societies carrying on the business of insurance in Ontario. R.S.O. 1937, c. 256, s. 228 (1); 1949, c. 45, s. 4.

Application
of ss. 253
to 258 to cer-
tain societies.

(2) Sections 253 to 258 shall not apply to a fraternal society the membership of which is limited by its constitution or laws to municipal or government employees. R.S.O. 1937, c. 256, s. 228 (2).

What
fraternal
societies
required to
be licensed.

238. Fraternal societies required to be licensed under this Act include the following:

- (a) a company, society, association or organization incorporated before the 10th day of March, 1890, under chapter 172 of The Revised Statutes of Ontario, 1887, or under any Act for which the said Act was substituted;
- (b) a society incorporated under chapter 183 of The Revised Statutes of Ontario, 1914, which undertakes insurance against death or under any Act for which the said Act was substituted;
- (c) an association of the civil servants or employees of Canada incorporated by or under the authority of an Act of the Parliament of Canada;
- (d) a fraternal society incorporated after the 1st day of January, 1924, under *The Companies Act*. R.S.O. 1937, c. 256, s. 229.

Rev. Stat.,
c. 59.

Cases in
which such
societies
not to be
licensed.

239. No fraternal society shall be licensed,

- (a) if it undertakes insurance contracts with persons other than its own members; or
- (b) if it insures or indemnifies against contingencies other than sickness, accident, disability, or death, or funeral expenses, or if the sum or sums payable on the death of any one person, other than a funeral benefit or a double indemnity accident benefit, exceed in all \$10,000; or
- (c) if it undertakes old age or endowment insurance other than as authorized in sections 263 and 264, or

annuities upon lives other than annuities issued as part of or arising directly from contracts of life insurance; or

- (d) if it has upon its books less than seventy-five members in good standing; or
- (e) if it is in effect the property of its officers or collectors, or of any other person for his own benefit, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured; or
- (f) in the case of a fraternal society which has not been authorized to carry on business in Ontario before the 1st day of January, 1925, unless the society files with the Superintendent a declaration of its actuary in the form and to the effect required by subsection 2 of section 252. R.S.O. 1937, c. 256, s. 230; 1944, c. 58, s. 7.

240. The following shall not be deemed fraternal societies within the meaning of this Part or required or entitled to be licensed as such, Societies not deemed to be fraternal societies.

- (a) societies known as mutual benefit societies as defined in section 1 and subject to Part XI, including,
 - (i) a society incorporated under sections 36 to 41 of chapter 183 of the Revised Statutes of Ontario, 1914, or any Act for which the same was substituted which does not undertake contracts of life insurance,
 - (ii) a trade union in Ontario which, under the authority of its incorporating Act, or charter, has an insurance or benefit fund for the benefit of its own members exclusively,
 - (iii) a mutual benefit society incorporated after the 1st day of January, 1925, under *The Companies Act*; Rev. Stat., c. 59.
- (b) pension fund and employees' benefit societies incorporated under *The Companies Act*;
- (c) a corporation not otherwise provided for in this Act which has by or under the authority of an Act of the Parliament of Canada created a fund for paying a gratuity on the happening of death, sickness,

infirmity, casualty, accident, disability or any change of physical or mental condition;

- (d) a corporation not otherwise provided for in this Act which has by or under the authority of an Act of the Parliament of Canada an insurance and provident society or association, or an insurance or guarantee fund in connection with the corporation;
- (e) a corporation which undertakes or offers to undertake contracts of insurance prohibited by section 239.
- (f) a corporation in which the insurance fund is used for the purposes of a mercantile or business enterprise, or for mercantile profit, or a society formed on the lodge system, the insurance fund of which is held other than as a trust fund for the members insured;
- (g) a society in which the persons insured do not exercise, either directly or through representatives elected for a term not exceeding four years, effective control over the insurance fund of the society, or in which the officers or other persons having the disposition, control or possession of the insurance fund are elected or appointed for a longer period than four years;
- (h) any corporation which undertakes contracts of insurance but is not formed exclusively for that purpose and which does not for the purposes of such contracts keep distinct and separate funds, securities, books and vouchers. R.S.O. 1937, c. 256, s. 231.

Guarantee
and
endowment
insurance.

241.—(1) Clause *c* of section 239 and clause *e* of section 240 shall not apply to contracts guaranteeing the fidelity of officers, servants or employees of the branches or subdivisions of the corporation, and shall not disentitle to licence a fraternal society which before the 1st day of January, 1925, was *bona fide* transacting exclusively with its members endowment insurance in Ontario, and which has continued so to do up to the date of application for licence.

Societies
composed of
municipal or
government
employees.

(2) Clause *c* of section 239, in so far as it relates to annuities upon lives, shall not apply to or disentitle to licence any society the membership of which is limited by its constitution or laws to municipal or government employees undertaking annuities on lives in the nature of old age pensions. R.S.O. 1937, c. 256, s. 232.

242.—(1) Where two or more lodges or branches of a society, though separately incorporated, are under the financial or administrative control of a central governing body in Ontario, or a duly authorized provincial representative of the society, such governing body if incorporated or such provincial representative of the society, may, if the Superintendent thinks proper, be dealt with as the society.

Central body for Ontario or representative may be dealt with.

(2) In the case of a fraternal society incorporated elsewhere than in Ontario the central governing or controlling body in Ontario if incorporated by virtue of the law of Ontario may, if the Superintendent thinks proper, be dealt with as the society. R.S.O. 1937, c. 256, s. 233.

When central body for Ontario incorporated.

243.—(1) Every fraternal society shall with its application for licence file in the office of the Superintendent, duly certified copies in duplicate of those articles or provisions of the subsisting constitution, by-laws or rules which contain material terms not set out in the instrument of contract adopted by the society, and shall from time to time file in the office of the Superintendent duly certified copies in duplicate of every amendment, revision or consolidation of the said articles or provisions of the constitution, by-laws and rules, within thirty days after the passing or adoption of such amendment, revision or consolidation thereof.

By-laws and rules to be filed with Superintendent.

(2) The Superintendent may within thirty days after the date of such filing take exception to any amendment or revision or any part thereof if, in his opinion, such amendment or revision or any part thereof is contrary to this Act, or is actuarially unsound, or is oppressive to or discriminatory in application against any class of the membership of the society, or is unjust or unreasonable.

Superintendent may take exception within 30 days.

(3) If the Superintendent takes exception to any such amendment or revision or any part thereof, in accordance with this section, he shall forthwith notify the society thereof in writing and the reasons therefor.

Notice.

(4) The society or any person who deems himself aggrieved by the decision of the Superintendent may appeal therefrom in the manner provided by section 12.

Appeal.

(5) The original constitution, by-laws and rules and any amendment, revision or consolidation thereof, to which the Superintendent does not take exception, or which after the Superintendent has taken exception to any amendment or revision or any part thereof have been further amended, in accordance with the Superintendent's direction, or which after the Superintendent has taken exception to any amend-

Certified by-laws and rules to be filed with Provincial Registrar.

ment or revision or any part thereof has been approved and confirmed on appeal from the Superintendent as herein provided, shall be certified by the Superintendent to be duly passed by the society, as filed and a copy thereof so certified by the Superintendent shall be filed by him in the office of the Provincial Registrar.

By-laws and rules as filed to be binding on society.

(6) The constitution, by-laws or rules and any amendment, revision or consolidation thereof so certified shall, notwithstanding the declaration or other instrument filed under any general or special Act, be deemed to be the rules in force on and after the date of the certificate until a subsequent amendment, revision or consolidation is in like manner certified and filed and so from time to time, and shall be binding and obligatory upon all members of the society and upon all their beneficiaries and legal representatives and upon everyone entitled to any benefit under any certificate of the society, provided that the failure of the Superintendent to take exception to any rule of the society or amendment or revision thereof and his certifying and filing of the same shall not make valid any provision of such rule which is inconsistent with this Act.

Effect of section.

(7) This section shall not apply to the constitution, by-laws and rules of a society or any amendment, revision or consolidation thereof passed and adopted by the society prior to the 1st day of January, 1925. R.S.O. 1937, c. 256, s. 234.

When rules must be amended.

244. Where, because of a provision in any of its rules, a society otherwise entitled to be licensed ought not, in the opinion of the Superintendent to be licensed, it shall not be entitled to a licence until it has repealed or amended such rules in accordance with the direction of the Superintendent. R.S.O. 1937, c. 256, s. 235.

Rules deliverable on demand.

245.—(1) A copy of all rules of a society relating to its insurance contracts and to the management and application of its insurance funds shall be delivered by the society to any person requiring the same on payment of twenty-five cents.

Fraudulent delivery.

(2) If an officer or agent of a society, with intent to mislead or defraud, gives any person a copy of rules other than the rules then in force on the pretence that the same are the rules then in force, he shall be guilty of an offence. R.S.O. 1937, c. 256, s. 236.

Substitution of instalments for gross payment.

246.—(1) Where by the constitution and rules of a society provision is made for the payment of an ascertained or ascertainable sum to a member of the society in the event of his

becoming totally disabled, or of his reaching a stated age, or upon the concurrence of both events, whether such provision is combined with other life insurance or not, such society may with the approval of the Superintendent so amend its constitution and rules as to provide for the payment of such sum in equal consecutive annual instalments without interest, the payment of such instalments to be completed within a period not exceeding ten years from the happening of the event, but no person who has become entitled, or may become so entitled as aforesaid, to any such annual instalment shall receive payment of the same unless at the maturity of each instalment such person has continued to be a member of the society and has paid all dues and assessments adopted by the society.

(2) All such amendments which have heretofore been or which may hereafter be made by any society pursuant to the provisions of the constitution and rules shall be valid and binding upon all its members and upon all their beneficiaries and legal personal representatives and upon every one entitled, notwithstanding anything to the contrary in the instrument of incorporation of the society or the previous provisions of its constitution and rules. Amendments of rules to that intent validated.

(3) If a member of such society dies after becoming totally disabled or reaching the stated age, but before the payment of all instalments, the instalments unpaid shall form part of the insurance money or benefits payable upon the death of such member. When insured dies before receiving all instalments.

(4) No unmatured policy or contract of insurance shall create any claim or liability against the society while a going society, or against the estate of the society in a winding-up or liquidation, but in a winding-up or liquidation the insured or beneficiary for value under such unmatured policy or contract shall be entitled to share in the surplus assets of the society. Unmatured policies as liabilities.
R.S.O. 1937, c. 256, s. 237.

247.—(1) The liabilities of a member under his contract shall at any date be limited to the assessments, fees and dues which became payable within the preceding twelve months and of which at such date notice had been given in accordance with the constitution and rules of the society. Limitation of member's liability in fraternal society.

(2) A member may at any time withdraw from the society by delivering or sending by registered post to the society notice in writing of his intention to withdraw and paying or tendering the assessments, fees and dues mentioned in subsection 1. Withdrawal of member.

(3) After such withdrawal the member shall become thereby released from all further liability under his contract. Release from liability.

Subject
to rules.

(4) This section shall be subject to any rules to the contrary certified by the Superintendent and filed with the Provincial Registrar as hereinbefore provided. R.S.O. 1937, c. 256, s. 238.

Notice
before
forfeiture
of benefit.

248.—(1) No forfeiture or suspension shall be incurred by reason of any default in paying any contribution or assessment, except such as are payable in fixed sums and at fixed dates, until after notice to the member stating the amount due by him, and that in case of default of payment within a reasonable time, not less than thirty days, to the proper officer, who shall be named in such notice, his interest or benefit will be forfeited or suspended, and default has been made by him in paying his contributions or assessment in accordance with such notice.

Interpre-
tation.

(2) In subsection 1, "fixed dates" includes any numbered day, or any Monday, Tuesday, or as the case may be, numbered, alternate or recurring, of a stated month or months.

Saving
rights to re-
instatement.

(3) Where under the constitution or rules or by-laws of the society a defaulting member is entitled to be reinstated on payment of arrears, after a stated number of days default, this section shall not prejudice the rights of such member. R.S.O. 1937, c. 256, s. 239.

Conditions
of forfeiture
restricted.

249.—(1) Where it is stipulated that the benefit of the contract shall be suspended or reduced or forfeited for any other reason than for non-payment of money such condition shall not be valid unless it is held to be just and reasonable under the circumstances of the case.

Condition
as to
abstinence.

(2) In any contract of which total abstinence from intoxicating liquors is made an express condition such condition shall be deemed to be just and reasonable. R.S.O. 1937, c. 256, s. 240.

How notice
may be
given to
members.

250.—(1) Subject to subsection 2, any notice required to be given to a member for any purpose of this Act or of the rules of the society may be effectually given if written or printed notice is delivered, or is sent by registered post to the member, or is left at his last known place of abode or of business or by publication in the official paper of the society.

Notice of
reduction
of benefit,
etc.

(2) A notice of the reduction of any benefit payable under a contract of insurance or of the increase of the premium payable thereunder shall be sent by registered post to the member at his last known place of abode or of business. 1950, c. 31, s. 3.

251. A society incorporated under any Act of the Legislature shall not be entitled to a licence unless its head office is located and maintained in Ontario and the secretary and treasurer are *bona fide* residents in Ontario. R.S.O. 1937, c. 256, s. 242.

Head offices of Ontario societies.

252.—(1) Subject to subsection 4, in addition to the annual statement required to be filed under this Act, each society shall file with the Superintendent not later than the 1st day of May in each year a valuation of its certificates or contracts of insurance in force at the last preceding 31st day of December, which valuation shall have regard to the prospective liabilities of the society under its certificates or contracts of insurance and to the rates of contribution to be thereafter received from its members on such certificates according to the rates in force at the date of valuation and shall be made and certified by an actuary appointed by the society and shall include a valuation balance sheet in such form and detail as the Superintendent may from time to time prescribe.

Societies to file actuarial report annually.

(2) Where in the opinion of the actuary appointed by the society the valuation balance sheet shows that the society is in a position to provide for the payment of its contracts of insurance as they mature, without deduction or abatement and without increase in its existing rates of contribution, the society shall file with the Superintendent a declaration of the actuary to that effect.

Society to file declaration of actuary, under what circumstances.

(3) A summary of the valuation certified by the actuary and a statement as to the financial condition of the society disclosed by such valuation shall be mailed to each insured member not later than the 1st day of June in each year or in lieu thereof such certified summary of the valuation and statement of the actuary may be published in the society's official paper and a copy mailed to each insured member.

Distribution of summary and statement to members.

(4) A fraternal society the membership of which is limited by its constitution or laws to municipal or government employees shall not be required to file the valuation mentioned in subsection 1 or to publish the summary thereof mentioned in subsection 3 unless and until required by the Superintendent in writing so to do. R.S.O. 1937, c. 256, s. 243.

Exception as to certain fraternal societies.

253.—(1) If it appears to the Superintendent from the statement and reports filed with him or from an examination or valuation made in pursuance of this Act, that the assets of a licensed fraternal society applicable to the payment of its insurance contracts are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of

Where assets of society insufficient, Superintendent to report to Minister,

contribution, he shall make a special report to the Minister as to the financial condition of the society.

Minister may request society to increase its rates, etc.

(2) If the Minister, after consideration of the report concurs in the opinion of the Superintendent, the Minister shall request the society to make, within such time as he may prescribe, but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise, as will enable the society to provide for the payment of its contracts of insurance at maturity.

Society to act upon request.

(3) On receipt of such request the society shall take the steps prescribed by its laws or constitution for putting into effect such changes as may be approved by the actuary appointed by the society for the purpose aforesaid.

Special meeting to consider request of Minister.

(4) Where in the opinion of the governing executive authority of the society a special meeting of the society is desirable for the purpose of considering the request of the Minister, the said governing executive authority of the society may call a special meeting of the supreme legislative body of the society upon such notice as the governing executive authority may deem reasonable, and as the Superintendent may approve and such meeting so called shall be deemed to have been regularly constituted notwithstanding any provisions contained in the constitution and laws of the society. R.S.O. 1937, c. 256, s. 244.

Reduction of benefits, or increase of rates.

254. A fraternal society incorporated under the laws of Ontario may by amendment of its constitution and laws reduce the benefits payable under its contracts of insurance or some of them, or increase the rates of contribution payable by its members as a whole or some class or classes thereof, or make such other changes as are necessary to comply with the aforesaid request of the Minister and such amendments when adopted by a majority of the votes duly cast by the members of the supreme legislative body of the society at a regular or special meeting of the said supreme legislative body of the society duly called shall be binding upon the members of the society and upon their beneficiaries or legal representatives and upon all persons deriving legal rights from any member or beneficiary, notwithstanding anything in the provisions of its constitution and laws before such amendments or in its Act or instrument of incorporation, or in any contract, policy or certificate of insurance heretofore or hereafter issued by the society. R.S.O. 1937, c. 256, s. 245.

Default of society in complying with request of Minister.

255.—(1) Where any society does not within the time allowed comply with the request of the Minister as prescribed by subsection 2 of section 253 the Superintendent shall report

the default to the Minister, who shall thereupon appoint a readjustment committee of three persons of whom at least one shall be an actuary who shall at as early a date as practicable investigate the assets, liabilities, rates of contribution and plans of insurance of such society and prepare a report containing such amendments to such society's constitution and laws reducing the benefits payable under its contracts of insurance or some of them or increasing the rates of contribution payable by its members as a whole or some class or classes thereof, or such other amendments as the readjustment committee deem necessary in order to provide for the payment of all the contracts of insurance of such society as they mature, in accordance with the amendments.

(2) The readjustment committee shall file such report in the office of the Superintendent and deliver to the society a certified copy thereof and immediately upon such report being filed with the Superintendent the amendments contained therein shall be and become part of the constitution and laws of such society and shall be valid and binding upon all its members and upon their beneficiaries or legal personal representatives and upon all persons deriving legal rights from any member or beneficiary notwithstanding anything in its constitution and laws before such amendments or in its Act or instrument of incorporation or in any policy or certificate of insurance issued by such society. Amendments in report of committee to be part of society's constitution.

(3) The readjustment committee shall in the amendments fix a date not more than six months after the date of filing of the report when the reduction of benefits or increase in the rate of contribution provided for by such amendments shall be in full force and effect. Date to be fixed in report.

(4) Such society shall bear the expense of the investigation and report and furnish the readjustment committee with required information. Expenses. R.S.O. 1937, c. 256, s. 246.

256.—(1) Where a society which is unable to furnish the declaration of an actuary prescribed in subsection 2 of section 252 has heretofore adopted or shall hereafter adopt new rates of contribution which in the opinion of the actuary appointed by the society, filed with the Superintendent, make reasonable provision for the payment in full at maturity of the contracts of insurance issued to its members who have entered or shall enter the society upon such new rates of contribution, such society shall, after the payment of the matured contracts of such members, create and from time to time maintain out of the rates of contributions of such members and interest accretions thereto, a reserve fund not less than the amount which, with the rates of contributions to be collected from Where society unable to furnish declaration of actuary.

such members, is, in the opinion of the actuary, required to pay in full such contracts of insurance as they mature, and such fund shall be a separate fund of the society and shall not be liable for payment of the debts and obligations of the society under its contracts of insurance with those members who have not contributed to the funds of the society under said new rates of contribution or under subsection 2.

New certificates may be issued.

(2) The society may provide in its constitution and laws for the issue of new certificates to members admitted to the society prior to the establishment of such fund upon such terms and conditions as will in the opinion of the actuary appointed by the society certified in writing to the Superintendent enable the society to pay in full the contracts of insurance issued to such members as they mature and subsection 1 shall apply to such new certificates.

Annual valuation of actuary, what to show.

(3) The annual valuation of the actuary of the society maintaining a separate fund as hereinbefore prescribed shall show clearly and separately and in such detail as the Superintendent may require, the financial position of the society in respect of the certificates of insurance included, and those not included, within the scope of the separate fund.

Merger of funds.

(4) When a society which has been maintaining a separate fund for new members in accordance with this section files with the Superintendent a declaration of the actuary appointed by the society in accordance with subsection 2 of section 252, the separate fund may, with the approval of the Superintendent, be merged with the other funds of the society of a kindred nature.

Maintenance of common expense fund.

(5) Nothing herein shall prevent a society which maintains a separate fund as hereinbefore described, from maintaining a common expense fund. R.S.O. 1937, c. 256, s. 247.

Life insurance on children.

257. Where a society is authorized by its constitution and laws and undertakes in Ontario to insure the lives of children the rates of contribution for such child insurance shall be approved by an actuary and the society shall maintain out of the rates paid upon contracts of child insurance and interest accretions thereto, a separate fund for the payment at maturity of such contracts, and the actuary appointed by the society to value its contracts of insurance shall make a separate valuation of the outstanding child insurance contracts, and shall show the amount of the fund held for such contracts. R.S.O. 1937, c. 256, s. 248.

258. A society which files with the Superintendent the declaration prescribed by subsection 2 of section 252 or a society that is maintaining a separate fund for its contracts of insurance as prescribed by section 256 may provide in its constitution and laws for the issue of contracts of life insurance wherein the regular rates of contributions payable thereunder may be limited to a period of twenty or more years, provided such rates of contribution have been approved by an actuary and provided further that such certificates of insurance shall be subject to subsection 1 of section 256 but such limitation of payments shall not affect the right of the society to make an assessment or assessments in respect of such certificates in accordance with the constitution and laws of the society either during or after the period of such limited payments. R.S.O. 1937, c. 256, s. 249.

Society may limit period to twenty years, under what circumstances.

259. In event of any epidemic or other unforeseen contingency impairing the funds of a society the governing executive authority of the society may impose a special assessment or special assessments upon the members of the society or upon such class or classes thereof and with such incidence as in the opinion of the governing executive authority is deemed necessary and equitable, and such special assessment or assessments shall be binding on the members of the society notwithstanding anything to the contrary in its Act or instrument of incorporation or its constitution and laws, or in any certificate of insurance heretofore or hereafter issued by the society. R.S.O. 1937, c. 256, s. 250.

Epidemic or unforeseen contingency.

260. The governing executive authority of a society may make such additional levies from time to time upon all members of the society as shall be necessary, in the opinion of the governing executive authority, to properly carry on the work of the society and prevent any deficit in its general or expense fund, and such additional levies shall be binding on the members of the society notwithstanding anything to the contrary in its Act or instrument of incorporation, or in its constitution or laws, or in any certificate of insurance heretofore or hereafter issued by the society. R.S.O. 1937, c. 256, s. 251.

General or expense fund.

261. A society whose valuation balance sheet prescribed by subsection 1 of section 252 shows a surplus of assets of more than five per cent over and above all its liabilities, may apply the surplus or a portion thereof, by way of transfer from the mortuary to the expense fund, by waiver of premium, by bonus additions or otherwise, in any manner which may be approved by the actuary appointed by the society; provided that a certificate of the actuary is filed with the Superintendent, at least thirty days before any application or transfer

Application of surplus.

is made, certifying that the proposed application or transfer is authorized by the constitution and laws of the society, that it is fair and reasonable and in the best interests of the society, and that it will not prejudice the ability of the society to pay its contracts of insurance as they mature. R.S.O. 1937, c. 256, s. 252.

Certificate approving rates to be filed.

262. Every licensed fraternal society shall before putting into effect any new or additional benefits or any new scale of rates of contribution under certificates of insurance, file with the Superintendent a certificate of an actuary approving of such benefits or rates of contribution. R.S.O. 1937, c. 256, s. 253.

Old age insurance in fraternal society.

263. Notwithstanding anything in this Act a fraternal society licensed under this Act which files with the Superintendent a declaration of an actuary as provided by subsection 2 of section 252 may, if its constitution so provides and subject thereto, issue to its members old age insurance contracts providing for the payment of the money due on maturity thereof either at death or upon the insured attaining any age not less than sixty-five years. R.S.O. 1937, c. 256, s. 254.

Endowment insurance.

264. A fraternal society licensed under this Act having more than five thousand members in the life insurance department, which has filed with the Superintendent for at least three successive years a declaration of an actuary as provided by subsection 2 of section 252 may, if its constitution so provides and subject thereto, issue to its members endowment insurance contracts providing for the payment of the insurance money to such members at the expiration of twenty or more years from the date of such contracts, or to the beneficiary or beneficiaries under any of such contracts in case of death of any of such members prior to the expiration of the endowment period. R.S.O. 1937, c. 256, s. 255.

Surrender values and other equities.

265. A fraternal society licensed under this Act which files with the Superintendent a declaration of an actuary as provided by subsection 2 of section 252 may, if its constitution so provides and subject thereto, grant such surrender values or other equities as may be approved by the actuary of the society and authorized by its constitution. R.S.O. 1937, c. 256, s. 256.

Report by Superintendent where assets of certain societies insufficient.

266.—(1) If it appears to the Superintendent from the statements and reports filed with him or from an examination or valuation made in pursuance of this Act that the assets of a licensed fraternal society, the membership of which is limited

by its constitution or laws to municipal or government employees applicable to the payment of its insurance contracts, are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of contribution, he shall make a special report to the Minister and to the head or responsible officer of the municipality or government of which the members of the society are employees as to the financial condition of the society.

(2) The Superintendent shall not make any order or assume any responsibility for the readjustment of rates and benefits of the society necessary to enable it to provide for the payment of the contracts of insurance of the society at maturity, but a synopsis of his special report shall be reported in his annual report. R.S.O. 1937, c. 256, s. 257. Responsibility of Superintendent.

267. Where the constitution, by-laws or rules of a fraternal society provide for a fiscal year other than the calendar year, the Superintendent may, in his discretion, accept statements from such a society showing its affairs as at the end of the fiscal year instead of as at the end of the calendar year. R.S.O. 1937, c. 256, s. 258. Exception as to annual statement.

PART XI

MUTUAL BENEFIT SOCIETIES

268. Mutual benefit societies required to be licensed under this Act include the following: What societies required to be licensed.

(a) a society incorporated under sections 36 to 41 of chapter 183 of the Revised Statutes of Ontario, 1914, or any Act for which the same was substituted, which does not undertake contracts of life insurance;

(b) a mutual benefit society incorporated after the 1st day of January, 1925, under *The Companies Act*. Rev. Stat., c. 59.
R.S.O. 1937, c. 256, s. 259.

269.—(1) Subject to subsection 2, no mutual benefit society shall be licensed, or have its licence renewed, What societies may not be licensed.

(a) if it has upon its books less than seventy-five members in good standing;

(b) if it insures or indemnifies against contingencies other than sickness, disability or funeral expenses;

(c) if it contracts for sick benefits for an amount in excess of \$18 per week exclusive of hospital benefits

not exceeding public ward rates or for a funeral benefit in excess of \$300;

- (d) if it undertakes insurance contracts with persons other than its own members;
- (e) if it is in effect the property of its officers or collectors, or of any other person for his own benefit, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured;
- (f) if it has charge of, or manages or distributes charity or gratuities or donations only. R.S.O. 1937, c. 256, s. 260 (1); 1949, c. 45, s. 5.

Exception.

(2) The Minister may, in his discretion, renew the licence of any mutual benefit society notwithstanding that it has upon its books, at the time of application for such renewal, less than seventy-five members in good standing. R.S.O. 1937, c. 256, s. 260 (2).

Application of certain sections of Part X.

270. Sections 242, 243 and 244 shall apply *mutatis mutandis* to societies licensed under this Part. R.S.O. 1937, c. 256, s. 261.

Exception as to annual statement.

271. Where the constitution, by-laws or rules of a mutual benefit society which grants benefits solely through subordinate lodges or branches provide for a fiscal year other than the calendar year, the Superintendent may, in his discretion, accept statements from such a society showing its affairs as at the end of its fiscal year instead of as at the end of the calendar year. R.S.O. 1937, c. 256, s. 262.

PART XII

PENSION FUND ASSOCIATIONS

Application of Part XII.

272.—(1) This Part shall apply to all applications for licence of pension fund associations and to such pension fund associations when licensed under this Act.

Application of certain sections.

(2) Subject to the express provisions of this Part, the provisions of this Act applicable to insurers licensed to undertake contracts of life insurance in Ontario, except sections 40 to 71 inclusive, section 78 and Part V, shall apply to all pension fund associations. R.S.O. 1937, c. 256, s. 263.

273. In addition to the annual statements required to be filed by every licensed insurer on or before the last day of February in each year, each pension fund association shall file with the Superintendent in such form and at such times as he may require, a valuation of its certificates or contracts of insurance, which valuation shall have regard to the prospective liabilities of the pension fund association under its certificates or contracts of insurance, and to the rates of contribution to be thereafter received from its members on such certificates according to the rates of contribution in force at the date of valuation, and shall be made and certified by an actuary appointed by the pension fund association and approved by the Superintendent, and shall include a valuation balance sheet in such form and detail and according to such standards of valuation, having regard to the table of mortality and the rate of interest to be employed, as the Superintendent may from time to time prescribe. R.S.O. 1937, c. 256, s. 264.

PART XIII

RECIPROCAL OR INTER-INSURANCE EXCHANGES

274. In this Part, unless the context otherwise requires, Interpretation.

- (a) "attorney" means a person authorized to act for subscribers as provided in section 277;
- (b) "subscribers" means persons exchanging with each other reciprocal contracts of indemnity or inter-insurance as provided in section 275. R.S.O. 1937, c. 256, s. 265.

275. It shall be lawful for any person to exchange with other persons in Ontario and elsewhere reciprocal contracts of indemnity or inter-insurance for any class of insurance for which an insurance company may be licensed under this Act except life insurance, accident insurance, sickness insurance and guarantee insurance. R.S.O. 1937, c. 256, s. 266.

276. No person shall be deemed to be an insurer within the meaning of this Act by reason of exchanging with other persons reciprocal contracts of indemnity or inter-insurance under this Act. R.S.O. 1937, c. 256, s. 267.

277.—(1) Reciprocal contracts of indemnity or inter-insurance may be executed on behalf of subscribers by any other person acting as attorney under a power of attorney, a copy of which has been duly filed as hereinafter provided.

Who may
maintain
action in
contract.

(2) Notwithstanding any condition or stipulation of any such power of attorney or of any such contract of indemnity or inter-insurance, any action or proceeding in respect of any such contract may be maintained in any court of competent jurisdiction in Ontario. R.S.O. 1937, c. 256, s. 268.

Declaration
by members
of exchanges.

278. The persons constituting the exchange shall, through their attorney, file with the Superintendent a declaration verified by oath, setting forth,

- (a) the name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any other name or designation previously adopted by any exchange or by any licensed insurer as in the opinion of the Superintendent to be likely to result in confusion or deception;
- (b) the classes of insurance to be effected or exchanged under such contracts;
- (c) a copy of the form of the contract, agreement or policy under or by which such reciprocal contracts of indemnity or inter-insurance are to be effected or exchanged;
- (d) a copy of the form of power of attorney under which such contracts are to be effected or exchanged;
- (e) the location of the office from which such contracts are to be issued;
- (f) a financial statement in the form prescribed by the Superintendent;
- (g) evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange;
- (h) evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney. R.S.O. 1937, c. 256, s. 269.

Form of
licence.

279.—(1) Upon an exchange complying with this Part the Superintendent may issue a licence in accordance with the form in Schedule C hereto.

(2) Notwithstanding anything in this Act the Superintendent may, with the approval of the Minister, require an exchange, as a condition of the issue or renewal of its licence, to deposit approved securities with the Minister in such amount and upon such terms and conditions as the Superintendent may deem proper. R.S.O. 1937, c. 256, s. 270.

280. A licence shall not be issued to an exchange to effect or exchange contracts of indemnity or inter-insurance, Evidence required before issue of licence for,

(a) against loss by fire, until evidence satisfactory to the Superintendent has been filed with him that applications have been made for indemnity upon at least seventy-five separate risks in Ontario or elsewhere aggregating not less than \$1,500,000 as represented by executed contracts or *bona fide* applications to become concurrently effective; fire insurance,

(b) in respect of automobiles, until evidence satisfactory to the Superintendent has been filed with him that applications have been made for indemnity upon at least five hundred automobiles as represented by executed contracts or *bona fide* applications to become concurrently effective, and that arrangements satisfactory to the Superintendent are in effect for the reinsurance of all liabilities in excess of such limits as the Superintendent may prescribe. R.S.O. 1937, c. 256, s. 271. automobile insurance.

281. Where the office from which such contracts are to be issued is not in Ontario, service upon the Superintendent of notice or process in any action or proceeding in Ontario in respect of contract of indemnity or inter-insurance effected by the exchange, shall be deemed service upon the subscribers who are members of the exchange at the time of such service. R.S.O. 1937, c. 256, s. 272. Service of process.

282. There shall be filed with the Superintendent by the attorney, as often as the Superintendent may require, a statement of the attorney under oath showing, in the case of fire insurance, the maximum amount of indemnity upon any single risk and a statement of the attorney verified by oath to the effect that he has examined the commercial rating of the subscribers of the exchange as shown by the reference book of a commercial agency, having at least five hundred subscribers and that from such examination or other information in his possession it appears that no subscriber has assumed on any single fire insurance risk, an amount greater than ten per cent of the net worth of such subscriber. R.S.O. 1937, c. 256, s. 273. Statement of maximum indemnity.

Amount of
reserve.

283.—(1) There shall at all times be maintained with such attorney, as a reserve fund, a sum in cash or approved securities equal to fifty per cent of the annual deposits or advance premiums collected or credited to the accounts of subscribers on contracts in force having one year or less to run, and *pro rata* on those for longer periods.

Guarantee
fund.

(2) Except as hereinafter provided, there shall also be maintained as a guarantee fund or surplus, an additional sum, in excess of all liabilities, in cash or approved securities amounting to not less than \$50,000.

Guarantee
fund of fire
insurance
domestic
exchange.

(3) In the case of a fire insurance exchange whose principal office is in Ontario, the guarantee fund or surplus referred to in subsection 2 shall not be less than \$25,000.

Guarantee
fund of
domestic
automobile
insurance
exchange.

(4) In the case of an automobile insurance exchange whose principal office is in Ontario, the guarantee fund or surplus referred to in subsection 2 shall, during the first year of operation of the exchange, be maintained at an amount not less than \$10,000, and thereafter not less than \$25,000.

Deficiency.

(5) If at any time the amounts on hand are less than the foregoing requirements the subscribers or the attorney shall forthwith make up the deficiency.

Use of funds
supplied to
make up
deficiency.

(6) Where funds other than those which accrued from premiums or deposits of subscribers are supplied to make up a deficiency as herein provided for, such funds shall be deposited and held for the benefit of subscribers under such terms and conditions as the Superintendent may require so long as a deficiency exists and may thereafter be returned to the depositor.

Interpre-
tation.

(7) In this section, "approved securities" means securities the investment in which is authorized by section 284. R.S.O. 1937, c. 256, s. 274.

Investment
of surplus
funds and
reserve.

284.—(1) If the principal office of the exchange is in Ontario, the surplus insurance funds and the reserve fund of the exchange shall be invested in the class of securities authorized by *The Companies Act* for the investment of the reserve funds of a joint stock insurance company incorporated thereunder.

Rev. Stat.,
c. 59.

Evidence as
to invest-
ments.

(2) If the principal office of the exchange is outside Ontario it shall be a condition precedent to the issue of a licence under this Act that evidence satisfactory to the Superintendent shall be filed with him showing that the class of security in which funds of the exchange are required by law to be invested

and are in fact invested, is within the limits of investment prescribed for the investment of the reserve funds of an insurance corporation by the jurisdiction in which the office of the exchange is situate. R.S.O. 1937, c. 256, s. 275.

285.—(1) No exchange shall undertake any liability on a contract of indemnity, inter-insurance or insurance except on behalf of a subscriber. R.S.O. 1937, c. 256, s. 276 (1). Contracts for subscribers only.

(2) No attorney or exchange shall effect reinsurance of any risks undertaken by the exchange in any licensed reciprocal or inter-insurance exchange unless such exchange operates on the same underwriting standards. R.S.O. 1937, c. 256, s. 276 (2); 1938, c. 37, s. 10. Reinsurance in another exchange.

286.—(1) No person shall act as attorney, or for or on behalf of any attorney, in the exchange of reciprocal contracts of indemnity or inter-insurance, or in acts or transactions in connection therewith, until a licence has been issued and unless such licence is in force. Attorney not to act until licence granted.

(2) Every person who, in contravention of subsection 1 undertakes or effects or agrees or offers to undertake or effect any exchange of reciprocal contracts of indemnity or inter-insurance or any act or transaction in connection therewith shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$50 and not more than \$500. R.S.O. 1937, c. 256, s. 277. Penalty.

287.—(1) Where a licensed exchange or attorney fails or refuses to comply with or contravenes any provision of this Act, the licence of the exchange may be suspended or revoked by the Minister on the report of the Superintendent after due notice and opportunity for a hearing before the Superintendent has been given to the exchange or its attorney, but such suspension or revocation shall not affect the validity of any reciprocal contracts of indemnity or inter-insurance effected prior thereto or the rights and obligations of subscribers under such contracts. Suspension or revocation of licence.

(2) Notice of such suspension or revocation shall be given by the Superintendent in at least two successive issues of *The Ontario Gazette* as soon as reasonably may be after such suspension or revocation. R.S.O. 1937, c. 256, s. 278. Notice.

288. The attorney shall, on or before the 1st day of March in each year, pay to the Treasurer of Ontario for the use of the Province, an annual tax equal to two per cent of the gross premiums or deposits collected from subscribers in respect of Annual tax.

risks located in Ontario during the preceding calendar year after deducting returns for cancellations, considerations for reinsurances with licensed insurers and all amounts returned to subscribers or credited to their accounts as savings during such year. R.S.O. 1937, c. 256, s. 279.

Fire insurance in unlicensed exchanges may be effected outside of Ontario.

289. Notwithstanding anything in this Act any person may insure against fire any property situated in Ontario in any exchange not licensed under this Act, and any property so insured or to be insured may be inspected and any loss incurred in respect thereof adjusted, provided such insurance is effected outside of Ontario and without any solicitation in Ontario directly or indirectly on the part of the insurer. R.S.O. 1937, c. 256, s. 280.

PART XIV

AGENTS, BROKERS AND ADJUSTERS

LICENCES OF INSURANCE AGENTS

Licensing agent.

290.—(1) The Superintendent may issue to any person who has complied with the requirements of this Act a licence authorizing such person to carry on business as an insurance agent subject to this Act and to the terms of the licence.

Classification.

(2) Licences so issued shall be of two classes,

(a) licences for life insurance, or life and accident insurance, or life and accident and sickness insurance;

(b) licences for any classes of insurance other than life insurance.

Issue of licence.

(3) Upon written notice to the Superintendent that a licensed insurer has appointed a person to act as his agent in Ontario and upon due application of such person and payment by him of the prescribed fee, the Superintendent shall, if he is satisfied that the applicant is a suitable person to receive a licence and intends to hold himself out publicly and carry on business in good faith as an insurance agent, issue to the applicant a licence which shall state in substance that the holder is, during the term of the licence, authorized to carry on within Ontario the business of an insurance agent.

Notice of appointment of agent.

(4) Such notice of appointment by an insurer shall be upon a form furnished by the Superintendent and shall state that the appointee has been authorized in writing by the insurer to act as agent in the soliciting of and negotiating for insurance and shall be accompanied by a sworn statement of the

appointee on a form furnished by the Superintendent which shall give the name, age, residence and present occupation of the applicant and his occupation for the five years next preceding the date of the notice and particulars of any other employment in which he may be engaged and such other information as the Superintendent may require.

(5) Where the applicant is the appointee of an insurer carrying on in Ontario the business of life insurance, or life and accident insurance, or life and accident and sickness insurance, the licence shall expressly limit the authorization of the agent to the class of insurance for which the insurer is licensed, and when the applicant is the appointee of an insurer carrying on in Ontario any class or classes of insurance business other than life insurance, the licence shall expressly exclude the business of life insurance, but nothing herein shall prevent the issue to the same applicant of two licences including all classes of insurance if due application has been made for two licences. Limitations of licence.

(6) Where the agency, upon notice of which a licence is issued, is terminated, notice in writing shall forthwith be given by the insurer to the Superintendent of such termination, with the reason therefor, and thereupon the licence shall be *ipso facto* suspended, but such licence may be revived subject to the approval of the Superintendent upon filing of notice of a new agency appointment and upon payment of a fee of \$1. Notice of termination of agency.

(7) An insurer who fails to notify the Superintendent within thirty days of the termination of an agency appointment as required by subsection 6 shall be guilty of an offence. Failure to give notice.

(8) A licence issued under this section may be revoked by the Superintendent if, after due investigation and a hearing, he determines that the holder of such licence, Revocation.

- (a) has violated any provision of this Act by any act or thing done in respect to insurance for which such licence is required; or
- (b) has made a material misstatement in the application for such licence; or
- (c) has been guilty of a fraudulent practice; or
- (d) has demonstrated his incompetency or untrustworthiness to transact the insurance agency business for which such licence has been granted, by reason of anything done or omitted in or about such business under the authority of such licence; or

- (e) has employed upon salary or otherwise any person whose application for licence as an insurance agent has been refused or whose licence has been revoked or suspended under this Part without having first obtained the written approval of the Superintendent. R.S.O. 1937, c. 256, s. 281 (1-8).

Advisory
board to
hold hearing
and report.

(9) In determining the granting or refusal of an application for a licence or renewal of licence, or the revocation of any existing licence, the Superintendent may, and shall when so requested in writing by the applicant or licensee, appoint an advisory board consisting of,

- (a) a representative of insurers;
- (b) a representative of agents; and
- (c) a representative of the Superintendent,

which shall hold a hearing and make a report to the Superintendent with such recommendation as it may deem fit. 1947, c. 51, s. 4 (1).

Chairman
of board.

(10) The representative of the Superintendent upon the advisory board shall act as chairman and for the purposes of his duties in connection with the investigation and hearing contemplated by subsection 9, shall have the same powers as are vested in the Superintendent by section 4. R.S.O. 1937, c. 256, s. 281 (10).

Decision
not subject
to appeal.

(11) Where the decision of the Superintendent is rendered after a hearing and in accordance with the recommendation of the board, his decision shall be final and binding upon all parties concerned and shall not be subject to appeal. 1947, c. 51, s. 4 (2).

Term and
renewal of
licence.

(12) A licence issued hereunder shall expire at such time as the regulations provide unless automatically suspended by notice pursuant to subsection 6 or unless revoked or suspended by the Superintendent; but such licence may, in the discretion of the Superintendent, be renewed for a succeeding year upon due application upon a form prescribed by the Superintendent giving such information as he may require, accompanied by a certificate of agency appointment of a licensed insurer and payment of the prescribed fee without requiring anew the detailed information hereinbefore specified. R.S.O. 1937, c. 256, s. 281 (11); 1940, c. 11, s. 6.

Authority
of agents.

(13) The holder of a licence under this section as agent for insurance other than life insurance may, during the term and validity of his licence, act as agent for any licensed insurer within the limits prescribed by his licence, and may act as an insurance broker in dealing with licensed insurers without

other or additional licences but may not act as agent or broker directly, or indirectly through a broker licensed for business with unlicensed insurers under section 293 or otherwise, in dealing with unlicensed insurers.

(14) No life insurance agent shall be licensed to act as agent for more than one insurer transacting life insurance, and the name of such insurer shall be specified in the licence, and no such agent shall represent himself to the public by advertisement or otherwise as the agent of more than one such insurer; provided that, where such an agent is unable to negotiate insurance on behalf of an applicant for insurance with the insurer for which he is the authorized agent, such agent shall have the right to procure such insurance from another insurer if such other insurer obtains in each case the consent in writing of the insurer for which such agent is the authorized agent, and files a copy of such consent with the Superintendent.

Authority of
life insurance
agents.

(15) A collector of insurance premiums who does not solicit application for or the renewal or continuance of insurance contracts or act or aid in negotiating such contracts or the renewal thereof, may carry on such business without a licence therefor, provided that the collection fee does not exceed five per cent of any amount collected. R.S.O. 1937, c. 256, s. 281 (12-14).

Collectors.

(16) A member of a duly licensed pension fund association other than a salaried employee who receives commission, or a member of a mutual fire, weather or live stock insurance corporation carrying on business solely on the premium note plan, may without a licence, solicit persons to become members of such society, association or corporation.

Members of
insurance
corporations.

(17) An officer or a salaried employee of the head office of a duly licensed fraternal society who does not receive commission, may, without a licence, solicit insurance contracts on behalf of the society.

Officers of
fraternal
societies.

(18) Any member not an officer or salaried employee described in subsection 17 may without a licence solicit insurance contracts on behalf of the society unless such member devotes or intends to devote more than one-half of his time to soliciting such contracts or has in the previous licence year solicited and procured life insurance contracts on behalf of the society in an amount in excess of \$20,000. 1942, c. 22, s. 8.

Members of
fraternal
societies.

(19) Unless the Superintendent otherwise directs, an officer or salaried employee of a licensed insurer who does not receive commissions, or an attorney or salaried employee of a recip-

Salaried
officials,
etc., acting
without
licence.

rocal or inter-insurance exchange at which no commission is paid except to such attorney, or a salaried employee of a licensed agent or broker who does not receive commissions and who acts only in the name and on behalf of such licensed agent or broker may, without a licence, act for such insurer, exchange, agent or broker in the negotiation of any contracts of insurance or in the negotiation of the continuance or renewal of any contracts which the insurer, exchange, agent or broker may lawfully undertake, provided that officers or employees whose applications for licences as insurance agents have been refused or whose licences have been revoked or suspended, may not so act without the written approval of the Superintendent, and provided further that in the case of insurers authorized to undertake life insurance, only the officers and salaried employees of the head office who do not receive commissions may so act without a licence.

Licensing of
transporta-
tion ticket
agents.

(20) Notwithstanding anything in this Act, the Superintendent may issue a licence to a transportation company authorizing it, by its employees in the province to act as an agent for a licensed insurer with respect to accident insurance and such other classes of insurance as he may approve.

Regulations.

(21) The licence shall be subject to such regulations as the Lieutenant-Governor in Council may prescribe with respect to the form of the certificate, the terms and conditions under which it is issued, and the circumstances under which it may be suspended or cancelled. 1939, c. 22, s. 5.

Penalty.

(22) Every person who assumes to act as an agent without the licence required by this section, or while his licence as such is suspended, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 281 (18).

LICENCES OF INSURANCE BROKERS

Licences of
insurance
brokers.

291.—(1) The Superintendent may, upon the payment of the prescribed fee, issue to any suitable person resident in Canada a licence to act in Ontario as an insurance broker to negotiate, continue or renew contracts of insurance other than life insurance or to place risks or effect insurance with any duly licensed insurer or its agent.

Application
to be filed
with Super-
intendent.

(2) The applicant for such licence shall file with the Superintendent a written application under oath upon a form provided by the Superintendent in which the applicant shall state his name, age, residence and occupation at the time of making the application, his occupation for the five years next preceding the date of the application and such other information as the

Superintendent may require, and the applicant shall declare that he intends to hold himself out publicly and carry on business in good faith as an insurance broker and he shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in Ontario.

(3) If the Superintendent is satisfied with the statement and information required by subsection 2 he shall issue the licence applied for, and the licence shall expire on the 30th day of September in each year unless sooner revoked or suspended. Superintendent may issue licence.

(4) The licence may, in the discretion of the Superintendent, be renewed upon payment of the prescribed fee for each succeeding year without requiring anew the detailed information hereinbefore specified. Renewal of licence.

(5) The Superintendent may, for cause shown and after a hearing, revoke the licence, or may suspend it for a period not exceeding the unexpired term thereof, and may for cause shown and after a hearing revoke the licence while so suspended, and shall notify the licensee in writing of such revocation or suspension and may publish a notice of such revocation or suspension in such manner as he may deem necessary for the protection of the public. Revocation or suspension of licence.

(6) Any person other than a licensed agent who assumes to act as an insurance broker without a licence or during a suspension of his licence shall be guilty of an offence. Penalty.

(7) Subject to section 294 a broker shall not be presumed to be the agent of the insurer or the agent of the insured by reason of the issue to him of a licence under this section. Licence not to import agency.
R.S.O. 1937, c. 256, s. 282.

292. In addition to issuing insurance brokers' licences giving full authority to the licensee as set forth in the preceding sections, the Superintendent may issue insurance brokers' licences limiting the authority of the licensee to the extent agreed upon with the applicant and set forth in the licence, but in other respects the granting of such licences and the brokers so licensed shall be subject to this Act. R.S.O. 1937, c. 256, s. 283. Licence may be granted limiting authority of licensee.

BROKERS' LICENCES FOR BUSINESS WITH UNLICENSED INSURERS

293.—(1) The Superintendent may, upon the payment of the prescribed fee, issue to any suitable person resident in Ontario, a licence to act as a special insurance broker to negotiate, continue or renew contracts of fire insurance on Licence to special insurance broker.

property in Ontario in insurers not authorized to transact such business in Ontario.

Application.

(2) The applicant for such licence shall file with the Superintendent a written application under oath as prescribed by section 291.

Expiration of licence.

(3) If the Superintendent is satisfied with the statements and information required, he shall issue the licence applied for subject to suspension or revocation in the discretion of the Superintendent, which licence shall expire on the 30th day of June in each year unless sooner suspended or revoked.

Renewal of licence.

(4) The licence may, in the discretion of the Superintendent, be renewed for each succeeding year upon payment of the prescribed fee without requiring anew the detailed information specified by section 291.

Security.

(5) Every person shall, before receiving such licence, execute and deliver to the Superintendent security to the satisfaction of the Superintendent in the sum of not less than \$5,000 that the licensee will faithfully comply with all the requirements of this Act.

When licensee may effect insurance with unlicensed insurers.

(6) Where sufficient insurance on property in Ontario cannot be obtained at reasonable rates or on the form of contract required by the insured from insurers licensed to do business in Ontario, the person named in such licence may effect insurance with unlicensed insurers, but shall in the case of every insurance effected under this section obtain from the insured a signed and dated statement describing the property insured, its location and the amount of insurance required and stating that the insurance cannot be obtained in licensed companies and that the application for such insurance at the stated rate of premium was previously made to and refused by named companies licensed in Ontario, and the person named in such licence shall, within ten days after the placing of such insurance with unlicensed insurers, submit to the Superintendent a statement setting forth the name of the insured, the property insured and its location, the full names of the unlicensed insurers, and the amount of insurance placed with each and the rate and amount of premium paid to each.

Records to be kept, inspection.

(7) Every such licensee shall keep a separate account of insurance effected by him under his licence in books in the form prescribed by the Superintendent, which shall be open to inspection by the Superintendent or any officer of the Department.

Monthly return.

(8) Within ten days after the end of each month every such licensee shall make to the Superintendent a return under oath

in the form and manner by him prescribed, containing particulars of all insurances effected under this section by the licensee during such month.

(9) In respect of all premiums on insurance effected under a licence, the licensee shall pay to the Department such taxes as would be payable if such premiums had been received by a licensed insurer, and payment thereof shall accompany the monthly return provided for in subsection 8. Tax on premiums.

(10) On it being shown to the satisfaction of the Minister that all insurances effected under this section are no longer in force or have been reinsured, the licensee shall be entitled to a release or cancellation of his security. Release of security given by licensee.

(11) A licensee under this section shall accept applications for insurance with unlicensed insurers only from the insured or another licensee under this section and shall not receive any such application from, or pay or allow compensation or anything of value in respect of such applications to, an agent or broker not licensed under this section, and any contract of insurance with an unlicensed insurer made by or through any agent or broker not licensed under this section shall be deemed to be unlawfully made within the meaning of section 296. Prohibition against accepting business from agents and brokers.

(12) Every person licensed under this section who contravenes any of the foregoing provisions of this section shall forfeit his licence and shall be guilty of an offence. R.S.O. 1937, c. 256, s. 284. Forfeiture of licence.

PROVISIONS RELATING TO AGENTS AND BROKERS GENERALLY

294.—(1) An agent or broker shall, for the purpose of receiving any premium for a contract of insurance be deemed to be the agent of the insurer notwithstanding any conditions or stipulations to the contrary. Agent or broker receiving premiums.

(2) This section shall not apply to life insurance. R.S.O. 1937, c. 256, s. 285. Application of section limited.

295. An agent or broker who knowingly procures by fraudulent representations, payment or the obligation for payment of any premium on an insurance policy, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 286. Fraudulent representations.

296. An agent or broker shall be personally liable to the insured on all contracts of insurance unlawfully made by or through him directly or indirectly with any insurer not licensed to undertake insurance in Ontario, in the same manner as if Personal liability of agent for unlawful contracts.

such agent or broker were the insurer. R.S.O. 1937, c. 256, s. 287.

LICENCES OF INSURANCE ADJUSTERS

Licences of
insurance
adjusters.

297.—(1) The Superintendent may, upon the payment of the prescribed fee, issue to any suitable person a licence to act as an adjuster; provided that a person licensed as an insurance agent or broker under this Part shall not receive a licence to act as an insurance adjuster.

Application
to be filed
with Super-
intendent.

(2) The applicant for such licence shall file with the Superintendent a written application under oath upon a form provided by the Superintendent in which the applicant shall state his name, age, residence and occupation for the five years next preceding the date of the application and such other information as the Superintendent may require, and the applicant shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in Ontario.

Licence to be
in force
one year.

(3) If the Superintendent is satisfied with the statements and information required, he shall issue the licence which shall expire on the 30th day of June in each year unless sooner revoked or suspended.

Renewal of
licence.

(4) A licence may, in the discretion of the Superintendent and upon payment of the prescribed fee, be renewed for each succeeding year without requiring anew the detailed information hereinbefore specified.

Revocation
or suspension
of licence.

(5) The Superintendent may, for cause shown and after a hearing, revoke the licence, or may suspend it for a period not exceeding the unexpired term thereof, and may, for cause shown and after a hearing, revoke the licence while so suspended, and shall notify the licensee in writing of such revocation or suspension.

Application
of s. 290,
subss. 8, 9
and 10.

(6) The provisions of subsections 8, 9 and 10 of section 290 with reference to grounds of revocation of licence, to the appointment of an advisory board, and to the power of the chairman thereof in the matter of insurance agents' licences, shall apply *mutatis mutandis* to applicants and licensees under this section; provided that a representative of adjusters shall replace a representative of agents on the board.

Penalty.

(7) Any person who acts as an adjuster without such a licence or during a suspension of his licence, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 288.

298.—(1) Subject to subsection 2, no person shall, on behalf of himself or any other person, directly or indirectly,

Prohibition
against
public
adjusters
of motor
accident
claims.

(a) solicit the right to negotiate, or negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or

(b) hold himself out as an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.

(2) This section shall not apply to a barrister or solicitor acting in the usual course of his profession. R.S.O. 1937, c. 256, s. 289.

Exception.

PARTNERSHIP LICENCES OF AGENTS, BROKERS AND ADJUSTERS

299.—(1) Licences as agents, brokers or adjusters may be issued to partnerships on the conditions hereinbefore specified for the issue of such licences to individuals except as otherwise provided in this section.

Licences to
partner-
ships.

(2) Each member of the partnership shall file the statement or application and pay the fee required by this Act, including a written request that the licence be issued in the name of the partnership, and the licence may be revoked or suspended as to one or more members of the partnership.

Statement
to be filed
by each
partner.

(3) If the partnership is terminated prior to the expiration of the licence, the partners shall forthwith give notice to the Superintendent, who shall thereupon revoke the licence.

Notice of
termination
of partner-
ship.

(4) Any member of a partnership licensed under this section who contravenes any of the provisions hereof, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 290.

Failure to
give notice.

CORPORATION LICENCES OF AGENTS, BROKERS AND ADJUSTERS

300.—(1) Licences as agents, brokers or adjusters may be issued to any corporation which is incorporated expressly for the purpose of acting as an insurance agent, broker or adjuster or for that and other purposes.

Licences to
corpora-
tions.

(2) Licences as agents or brokers shall not be issued to a corporation whose head office is outside of Canada or if it appears to the Superintendent that the application is made

When
licences
not to be
issued.

for the purpose of acting as agent or broker wholly or chiefly in the insurance of property owned by the corporation or by its shareholders or members, or in the placing of insurance for one person, firm, corporation, estate or family.

Provisions
as to
licences.

(3) Except as otherwise provided in this section, such licences, and the corporation and officers of the corporation named in the licence, shall be subject to the provisions of this Act with respect to agents, brokers and adjusters.

Officers who
may act
under
licence.

(4) The licence shall specify the officers who may act thereunder in the name and on behalf of the corporation and every such officer shall file a statement or application and pay the fee required by this Act for individual agents, brokers or adjusters provided that employees who do not receive commissions and who act only in the name and on behalf of the corporation may so act by authority of the corporation licence although not named therein.

Revocation
of licence.

(5) A licence may be revoked or suspended as to the corporation or as to any officers named therein.

Superin-
tendent
may require
information.

(6) If the principal business of a corporation licensed under this section is not the business of an insurance agent or broker or adjuster, the Superintendent may require from such a corporation such information as he deems necessary in respect to the corporation, its officers and affairs and may make such examination of its books and affairs as he deems necessary for the purposes of this Act.

Notice of
dissolution
of corpora-
tion.

(7) Any corporation licensed under this section shall forthwith notify the Superintendent in writing of the dissolution or revocation of the charter of the corporation and upon receipt of such notice the Superintendent shall forthwith revoke the licence.

Personal
liability
of officers.

(8) Every officer specified in the licence who contravenes any of the provisions of this section shall be guilty of an offence and shall be personally liable therefor, although such contravention is committed in the name and on behalf of the corporation, and the corporation shall be liable for any such contravention the responsibility for which cannot be placed upon any such officer. R.S.O. 1937, c. 256, s. 291.

PROVISIONS RELATING TO AGENTS, BROKERS AND ADJUSTERS GENERALLY

Acting as
agent,
broker
or adjuster
without
authority.

301. Any person who not being duly licensed as an agent, broker or adjuster, represents or holds himself out to the public as being such an agent, broker or adjuster, or as being engaged in the insurance business by means of advertisements,

cards, circulars, letterheads, signs, or other methods, or being duly licensed as such agent, broker or adjuster, advertises as aforesaid or carries on such business in any other name than that stated in the licence, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 292.

302. An agent or broker who acts in negotiating, or renewing or continuing a contract of insurance, other than life insurance, with a licensed insurer, and who receives any money or substitute for money as a premium for such a contract from the insured, shall be deemed to hold such premium in trust for the insurer, and, if he fails to pay the same over to the insurer within fifteen days after written demand made upon him therefor, less his commission and any deductions to which, by the written consent of the company, he may be entitled, such failure shall be *prima facie* evidence that he has used or applied the said premiums for a purpose other than paying the same over to the insurer, and that he has been guilty of an offence. R.S.O. 1937, c. 256, s. 293.

Agent to be deemed to hold premium in trust for insurer.

303.—(1) No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting so to do, who, at the date thereof, is not a duly licensed insurance agent or broker or a person acting under subsections 16 and 19 of section 290 and whoever knowingly violates the provisions of this section shall be guilty of an offence.

No compensation to be paid by insurer to person not licensed.

(2) No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly make or attempt to make any agreement as to the premium to be paid for a policy other than as set forth in the policy, or pay, allow or give, or offer or agree to pay, allow or give, any rebate of the whole or part of the premium stipulated by the policy, or any other consideration or thing of value intended to be in the nature of a rebate of premium, to any person insured or applying for insurance in respect of life, person or property in the Province, and every insurer or other person who violates the provisions of this section shall be guilty of an offence.

Agreement as to premium other than as in policy prohibited.

(3) Nothing in this section shall affect any payment by way of dividend, bonus, profit or savings which is provided for by the policy, or be construed so as to prevent an insurer com-

Exceptions.

pensating a *bona fide* salaried employee of its head or branch office in respect of insurance issued by the employing insurer upon the life of such employee or so as to require that such employee shall be licensed as an agent for life insurance under this Act to effect such insurance. R.S.O. 1937, c. 256, s. 294.

Twisting life insurance policies prohibited.

304. Any person licensed as an agent for life insurance under this Act who induces, directly or indirectly, an insured to lapse, forfeit or surrender for cash, or for paid up or extended insurance, or for other valuable consideration, his contract of life insurance with one insurer in order to effect a contract of life insurance with another insurer, or makes any false or misleading statement or representation in the solicitation or negotiation of insurance, or coerces or proposes, directly or indirectly, to coerce a prospective buyer of life insurance through the influence of a business or a professional relationship or otherwise, to give a preference in respect to the placing of life insurance which would not be otherwise given in the effecting of a life insurance contract, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 295.

Returns to Superintendent.

305. Every licensed insurer shall make a return under oath to the Superintendent in such form and at such times as he may require, showing all persons, partnerships and corporations duly authorized as its agents in Ontario, and of persons, partnerships or corporations to whom it has, within such period as the form of return may require, paid or allowed or agreed to pay or allow, directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting to do so. R.S.O. 1937, c. 256, s. 296.

Appeal.

306. If the Superintendent refuses, suspends or revokes a licence applied for by or issued to a broker or adjuster he shall state in writing his reasons therefor and any person who deems himself aggrieved by the decision of the Superintendent may appeal therefrom to the Minister and in case of an appeal the decision of the Superintendent shall not take effect until after the hearing and disposition thereof by the Minister. R.S.O. 1937, c. 256, s. 297.

Limited or conditional licence.

307. A licence may be issued to an agent or adjuster subject to such limitations and conditions as the Superintendent may prescribe. R.S.O. 1937, c. 256, s. 298.

PART XV

RATES AND RATING BUREAUX

308. In this Part, "rating bureau" means any association or body incorporated or unincorporated, created or organized for the purpose of fixing or promulgating rates of premium payable upon contracts of insurance in Ontario, or the terms or conditions of such contracts, or for these and other purposes, or which assumes to fix or promulgate such rates, terms or conditions by agreement among the members thereof or otherwise. R.S.O. 1937, c. 256, s. 299. Interpretation.

309.—(1) Every rating bureau shall, forthwith after adoption file in the office of the Superintendent duly certified copies of its constitution, articles of association and by-laws, and a list of members of such bureaux and their addresses, and thereafter shall file in the office of the Superintendent every amendment, revision or consolidation of its constitution, articles of association and by-laws, and notice of the admission of new members and the withdrawal of former members, within thirty days after the passing or adoption of such amendment, revision or consolidation, or after the admission or withdrawal of such members. Filing of constitution, by-laws, etc., in office of Superintendent.

(2) Every rating bureau and every licensed insurer shall make a return under oath to the Superintendent in such form and at such times as he may require, showing every or any schedule of rates fixed, made, or charged by them, together with such further or other information concerning such rates as he deems necessary or desirable. Return of rates.

(3) Every rating bureau and every licensed insurer shall give to the Superintendent at least ten days notice of any change in the schedules of rates or rules applicable thereto, filed with the Superintendent pursuant to subsection 2, and shall file with the Superintendent amended schedules duly verified under oath showing particulars of all such changes before the effective date thereof. Changes in rates.

(4) Any rating bureau or licensed insurer which, having filed its schedules of rates pursuant to this section, fixes, makes or charges any rate or receives any premium which deviates from the schedules of rates fixed and filed with the Superintendent for, and the rules applicable to, any risk or class of risks, shall be guilty of an offence. R.S.O. 1937, c. 256, s. 300. Penalty for deviation from filed rate.

Preferential rates for groups of persons prohibited.

310.—(1) No rating bureau and no insurer authorized to transact the business of insurance within Ontario shall fix or make any rate or schedule of rates or charge a rate for automobile insurance to any group of persons by reason of such group being engaged in any trade, calling, profession or occupation, or by reason of membership in any guild, union, society, club or association or by reason of common employment or by reason of common occupancy of the same building or group of buildings or for any other reason which would result in a lower cost to an individual in such group than such individual would have had to pay if insured individually, and every insurer or other person who violates the provisions of this section shall be guilty of an offence.

Exception where vehicles owned by same person.

(2) Nothing in this section shall be deemed to prohibit the fixing or charging of a special rate for the insurance of two or more motor vehicles owned by and registered in the name of the same person. R.S.O. 1937, c. 256, s. 301.

Discrimination in rates.

311.—(1) No rating bureau and no insurer authorized to transact the business of insurance within Ontario shall fix or make any rate or schedule of rates or charge a rate which discriminates unfairly between risks within Ontario of essentially the same physical hazards in the same territorial classification, or, if such rate be a fire insurance rate, which discriminates unfairly between risks in the application of like charges or credits or which discriminate unfairly between risks of essentially the same physical hazards in the same territorial classification and having substantially the same degree of protection against fire.

Commencement of section.

(2) Notwithstanding anything in this Act, this section and section 312 shall not be deemed to be in force until a day to be named by the Lieutenant-Governor by his proclamation. R.S.O. 1937, c. 256, s. 302.

Authority to require information to be filed.

312.—(1) The Superintendent may on written complaint by an insurer or an insured that discrimination exists or upon such information filed with him as the Superintendent deems sufficient to justify an investigation, give notice in writing to a rating bureau or insurer, requiring such rating bureau or insurer to file with the Superintendent any schedules of rates or particulars showing how any specific rate is made up and any other information which he deems necessary or desirable.

Time limit for filing information.

(2) Such rating bureau or insurer shall, within five days after the receipt of the notice, file with the Superintendent the schedules, particulars and other information required.

(3) The Superintendent may, within thirty days after the receipt of the information required, make an order prohibiting any rate which, in his opinion, contravenes the provisions of section 311 and directing that the discrimination be removed. Issue of order prohibiting rate.

(4) The Superintendent shall forthwith deliver to the rating bureau or insurer a copy of such order and reasons therefor and shall cause notice thereof to be published forthwith in *The Ontario Gazette*. Notice of order.

(5) No rating bureau or insurer shall remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it be made to appear to the satisfaction of the Superintendent that such increase is justifiable. Rating bureau not to increase rate.

(6) Any rating bureau, insurer or other person failing to comply with any provision of such order shall be guilty of an offence. Penalty.

(7) Any order made under this section shall not take effect for a period of ten days after its date and shall be subject to appeal within that time in the manner provided by section 12 and in the event of an appeal the order of the Superintendent shall not take effect pending the disposition of the appeal. Appeal.
R.S.O. 1937, c. 256, s. 303.

(NOTE:—See subsection 2 of section 311.)

313.—(1) It shall be the duty of the Superintendent, after due notice and a hearing before him, to order an adjustment of the rates for automobile insurance, whenever it is found by him that any such rates are excessive, inadequate, unfairly discriminatory, or otherwise unreasonable. Superintendent empowered to order rate adjustment.

(2) Any order made under this section shall not take effect for a period of ten days after its date, and shall be subject to appeal within that time by any insured, insurer or rating bureau, in the manner provided by section 12 and, in the event of an appeal, the order of the Superintendent shall not take effect pending the disposition of the appeal. Appeal from order.

(3) The Attorney-General shall be served with notice of any such appeal and shall be entitled to be heard by counsel upon the hearing thereof. Attorney-General to be heard.

(4) Any rating bureau, insurer or other person failing to comply with any provision of such order shall be guilty of an offence. Penalty.

(5) This section shall come into force on a day to be named by the Lieutenant-Governor by his proclamation. R.S.O. 1937, c. 256, s. 304. Commencement of section.

Superintendent to have access to books.

314. The Superintendent or any person authorized under his hand and seal of office shall at all times have access to all such books, securities or documents of a rating bureau or insurer as are related to the schedules of rates of the rating bureau or insurer, and any officer or person in charge, possession, custody or control of such books, securities or documents who refuses or neglects to afford such access shall be guilty of an offence. R.S.O. 1937, c. 256, s. 305.

Inquiry by Superintendent.

315.—(1) The Superintendent may inquire into any question which an insurer, insured or a rating bureau may bring before him with regard to insurance rates fixed by any rating bureau or charged by an insurer and also with regard to any other question arising out of the relationship or proposed relationship of the parties with reference to the insurance in question.

Report of Superintendent.

(2) The Superintendent shall not make any order pursuant to an inquiry under this section, but the result of such inquiry shall be reported in his annual report. R.S.O. 1937, c. 256, s. 306.

PART XVI

AMALGAMATION, TRANSFER AND REINSURANCE

Interpretation.

316. In this Part, "reinsurance" means an agreement whereby contracts made in Ontario by a licensed insurer or any class or group thereof are undertaken or reinsured by another insurer either by novation, transfer, assignment or as a result of amalgamation of the insurers. R.S.O. 1937, c. 256, s. 307.

Application.

317.—(1) Nothing in this Part shall affect contracts of reinsurance of individual risks made by insurers in the ordinary course of business.

Amalgamation: compliance with law where incorporated.

(2) In the case of the amalgamation of insurers, if one of the contracting insurers is an insurer not incorporated or organized under the law of Ontario, the Superintendent shall not recommend that the agreement be approved by the Lieutenant-Governor in Council as hereinafter provided until it has been established to his satisfaction that the insurers, party to the agreement, have fully complied with the requirements of the law of the legislative authority under which the insurer was incorporated or organized; provided that a certificate of the supervising insurance official appointed by such legislative authority that such insurer has fully complied with the requirements of the law of the said authority shall

be sufficient evidence to the Superintendent of that fact. R.S.O. 1937, c. 256, s. 308.

318.—(1) An agreement for reinsurance shall be evidenced by an instrument in writing setting forth in full the terms and conditions of such reinsurance but no such agreement shall be entered into unless and until the permission of the Superintendent has been obtained and the agreement shall not be binding or effective until approved by the Lieutenant-Governor in Council upon the report of the Superintendent. Agreement to be in writing.

(2) Upon the approval of the Lieutenant-Governor in Council such agreement shall be valid and binding notwithstanding any irregularity in procedure or any failure to comply with the procedural provisions of this Part. R.S.O. 1937, c. 256, s. 309. Irregularity not to invalidate.

319. When any such agreement for reinsurance has been entered into, insurers, party thereto, shall within thirty days from the date of execution of the agreement apply to the Lieutenant-Governor in Council to approve the same by petition filed with the Superintendent. R.S.O. 1937, c. 256, s. 310. Approval of Lieutenant-Governor in Council.

320.—(1) In the case of life insurance, before any such application is made, notice thereof together with, Notice, etc., to shareholders and policyholders.

- (a) a statement of the nature and terms of the agreement for reinsurance;
- (b) an abstract containing the material facts embodied in the agreement under which such reinsurance is proposed to be effected; and
- (c) copies of the actuarial or other reports upon which such agreement is founded including a report by an independent actuary approved by the Superintendent,

shall be served on the shareholders or members and on the holders of all policies in Ontario other than industrial policies of each insurer; provided however that the Superintendent may dispense with the service of such documents on the policyholders of the reinsuring insurer.

(2) Such notice and documents shall be served by being transmitted through the post office directed to the registered or other known address of each such shareholder, member and policyholder and within such period that they may be delivered in the due course of delivery at least thirty days before the day appointed for the hearing of the application. Service.

Service on members of fraternal society.

(3) Where a fraternal society is a party to an agreement for reinsurance, such notice and documents shall be deemed to be served on the members of the fraternal society if published in the official organ or publication, if any, of such society at least thirty days before the day appointed for the hearing of the application.

Inspection of agreement by shareholders and policyholders.

(4) The agreement under which such reinsurance is proposed to be effected shall be open to the inspection of the policyholders and shareholders at the principal offices of the insurers within Ontario for a period of thirty days after the issue of the abstract herein provided for.

Publication of notice.

(5) A copy of such notice shall also be published in *The Ontario Gazette* at least thirty days before the application is made. R.S.O. 1937, c. 256, s. 311.

Retiring allowance for officers of fraternal society.

321. In the case of fraternal societies, any such agreement for reinsurance may provide for granting out of the funds of the continuing society to any officer who has been in the service of a society party to such agreement for at least twenty years, and who is more than sixty years of age, and whose services will not be required after such agreement becomes effective, a sum not exceeding the aggregate of his salary or other remuneration for the next preceding three years or, in the alternative, an annual retiring allowance to any such officer during the remaining years of his life not exceeding three-fifths of his average annual salary for the next preceding three years of his service and payable weekly, semi-monthly or otherwise as may be agreed upon. R.S.O. 1937, c. 256, s. 312.

Documents to be filed with Superintendent.

322. Upon the filing of the petition the insurers party to the agreement shall deposit with the Superintendent the following documents:

- (a) a certified copy of the agreement for reinsurance;
- (b) a statement of the nature and terms of reinsurance;
- (c) certified copies of the statements of assets and liabilities of the insurers party to the agreement;
- (d) certified copies of the actuarial or other reports upon which the agreement is founded;
- (e) a declaration under the hands of the president or principal officer and manager or secretary of each insurer that to the best of their knowledge and belief every payment made or to be made to any person whatsoever on account of the reinsurance is therein fully set forth and that no other payments beyond those set forth have been made or are to be made

either in money, policies, bonds, valuable securities or other property by or with the knowledge of any of the parties to the reinsurance;

(f) evidence of the service and publication of the notices required by section 320, if any;

(g) such other information and reports as the Superintendent may require. R.S.O. 1937, c. 256, s. 313.

323. Upon receipt of the petition, the Superintendent shall Day of hearing. fix a day for hearing the application and notice of the hearing shall be given in *The Ontario Gazette* at least ten days before the date fixed for the hearing. R.S.O. 1937, c. 256, s. 314.

324. After hearing the directors, shareholders, members Recommendation of Superintendent. and policyholders and other persons whom he considers entitled to be heard upon the application or giving them an opportunity to be so heard, the Superintendent may recommend that the agreement be approved by the Lieutenant-Governor in Council if he is satisfied that no sufficient objection to the arrangement has been established. R.S.O. 1937, c. 256, s. 315.

325. No such agreement shall be recommended if it Impairment of assets of combined or continuing insurer. appears to the Superintendent that, after the consummation of the reinsurance, an impairment or deficiency will exist in the balance sheet of the continuing or reinsuring insurer when its liabilities (including its capital stock, if any) are calculated according to this Act. R.S.O. 1937, c. 256, s. 316.

326.—(1) If, in the case of a fraternal society, it appears to Report by Superintendent where reinsurance advisable. the Superintendent from the statement and reports filed with him, or from any examination or inquiry made pursuant to this Act, that, owing to depletion in membership or otherwise, the reinsurance of its contracts would be in the best interests of its members, he shall so advise the society and request that the advisability of entering into an agreement for reinsurance be considered.

(2) Where, in the opinion of the governing executive Special meeting may be called. authority of the society, a special meeting of the society is desirable for the purpose of considering the request of the Superintendent, the said governing executive authority of the society may call a special meeting of the supreme legislative body of the society upon such notice as the governing executive authority may deem reasonable, and as the Superintendent may approve, and such meeting so called shall be deemed to have been regularly constituted notwithstanding any provisions contained in the constitution and laws of the society. R.S.O. 1937, c. 256, s. 317.

SCHEDULE A

(Section 86)

INSURERS

(Section 23)

1. Licence, original and annual renewal thereof:

(1) Mutual benefit societies.....	\$10.00
(2) Pension fund associations.....	50.00
(3) Fraternal societies:	
(a) If the assets of the society do not exceed \$100,000..	25.00
(b) If the assets of the society exceed \$100,000 but do not exceed \$500,000.....	50.00
(c) If the assets of the society exceed \$500,000 but do not exceed \$1,000,000.....	100.00
(d) If the assets of the society exceed \$1,000,000.....	150.00
(4) Reciprocal or inter-insurance exchanges.....	100.00
(5) Mutual and cash-mutual fire insurance corporations filing annual statements pursuant to section 74 (1) of <i>The Insurance Act</i> :	
(a) Where the gross amount at risk does not exceed \$1,000,000.....	25.00
(b) Where the gross amount at risk exceeds \$1,000,000 but does not exceed \$5,000,000.....	50.00
(c) Where the gross amount at risk exceeds \$5,000,000 but does not exceed \$10,000,000.....	75.00
(d) Where the gross amount at risk exceeds \$10,000,000 but does not exceed \$20,000,000.....	100.00
(e) Where the gross amount at risk exceeds \$20,000,000 but does not exceed \$30,000,000.....	150.00
(f) Where the gross amount at risk exceeds \$30,000,000 but does not exceed \$40,000,000.....	200.00
(g) Where the gross amount at risk exceeds \$40,000,000 but does not exceed \$50,000,000.....	250.00
(h) Where the gross amount at risk exceeds \$50,000,000	300.00
NOTE.—“gross amount at risk” means gross amount at risk in Ontario as at the 31st December next preceding the application for licence or renewal thereof.	
(6) The Non-Marine Underwriters Members of Lloyd's, London.....	300.00
(7) Insurers authorized to transact live stock insurance exclusively.....	50.00
(8) Insurers undertaking reinsurance exclusively.....	50.00
(9) Insurers not included within sub-items (1) to (8) inclusive:	
(a) Where the assets of the insurers do not exceed \$500,000.....	150.00
(b) Where the assets of the insurers exceed \$500,000 but do not exceed \$1,000,000.....	175.00
(c) Where the assets of the insurers exceed \$1,000,000 but do not exceed \$5,000,000.....	200.00

- (d) Where the assets of the insurers exceed \$5,000,000 but do not exceed \$10,000,000. \$250.00
- (e) Where the assets of the insurers exceed \$10,000,000. 300.00

NOTE.—The assets of the insurer as used in this schedule means, if the head office of the insurer is in Canada, the total gross assets of the insurer wherever situate, as exhibited by the balance sheet of the insurer at the end of the last preceding accounting period of the insurer, and as issued to the public in Canada, or, if the head office of the insurer is not in Canada, the equivalent in Canadian currency at par of exchange of the total assets of the insurer exhibited by the head office balance sheet in the currency of the country where the head office of the insurer is situate.

2. Renewal of licence of insurers which have discontinued undertaking or renewing insurance contracts in the Province except mutual benefit societies and insurers renewing life insurance policies.	10.00
3. Examining and passing upon applications for initial licence (section 23):	
(1) Mutal benefit societies.	10.00
(2) All others.	25.00
4. Amendment of licence.	10.00
5. Order in Council withdrawing or transferring deposit (sections 45 and 50).	25.00
6. Substitution of securities on deposit (except matured securities) calculated on the par value of securities withdrawn (section 43):	
Under \$10,000.	10.00
\$10,000 and under \$25,000.	20.00
\$25,000 and over.	25.00
7. Filing annual statements (section 74).	5.00
8. Extension of time not exceeding seven days or any renewal thereof not exceeding seven days, for filing annual statement, applications for renewal of licence, or any other document or information required under this Act, provided that the Superintendent may grant relief from the payment of this fee in any case in which he thinks for reasons appearing to him to be sufficient, that it should not be imposed.	10.00
9. Licence, original and annual renewal thereof, to issue contracts of insurance through an underwriters agency, term to expire on the 30th of June in each year (section 80).	100.00
10. Order in Council authorizing bonds for Court purposes (section 19).	100.00
11. Order in Council authorizing society to hold land (section 77).	10.00

AGENTS, BROKERS AND ADJUSTERS

(Sections 290, 291, 293 and 297)

12. Licences for life insurance or life and accident insurance or life and accident and sickness insurance,
- (a) Where an applicant is a resident of Ontario. 5.00
- (b) Where an applicant is non-resident of Ontario,
- (i) if he resides in a province or state that grants

licences to residents of Ontario, the same fee as is payable by resident of that province or state for a similar licence in the province or state, or \$5 whichever is the greater,	
(ii) if he resides in a province or state that does not grant licences to residents of Ontario.....	\$50.00
13. Licences for any class of insurance other than life insurance, original or renewal thereof,	
(a) Where an applicant carries on business in a municipality having a population in excess of 10,000 according to the last revised assessment roll, or resides outside Ontario.....	25.00
(b) Where an applicant carries on business in a municipality having a population less than 10,000 according to the last revised assessment roll.....	15.00
(c) Where a licence is expressly limited to accident and sickness insurance.....	5.00
14. Licences for insurance brokers, original or annual renewal thereof.....	25.00
15. Licences for special insurance brokers for business with unlicensed insurers, original or renewal thereof.....	25.00
16. Licences for insurance adjusters, original or renewal thereof.....	10.00
17. Licence under subsection 20 of section 290 in the name of a transportation company authorizing its ticket agent to act as agent for railway accident insurance, live stock insurance or baggage insurance, original or renewal thereof.....	10.00

MISCELLANEOUS

18. Certificate of Superintendent.....	1.00
19. Copies of or extracts from documents filed with or issued by the Superintendent, per folio of 100 words.....	.10
20. Certified copy of licence.....	2.00

Where the fee payable for any licence under sections 23 and 80 exceeds \$15.00 the fee for a period of six months or under shall be one-half of the fee payable for the full term.

R.S.O. 1937, c. 256, Sched. A.; O. Reg. 156/49.

SCHEDULE B

PREMIUM NOTE

(Section 115)

(Place)

(Date)

In consideration of insurance granted under Policy No.....
 I hereby promise to pay the.....Company
 at.....(place of payment) the sum of.....dollars, as follows:
 on.....day of.....19.., in full of cash payment,.....dollars

—or—

on.....day of.....19.., 1st instalment of cash payment.....dollars;
 on.....day of.....19.., 2nd instalment of cash payment.....dollars;
 on.....day of.....19.., 3rd instalment of cash payment.....dollars

—and—

upon notice such further sums not exceeding, in the aggregate, the face

amount of this note as may be lawfully assessed hereon by the directors of the said Company pursuant to the provisions of *The Insurance Act*.

Any action which may be brought or commenced in a Division Court in respect or on account of this note, or any sum to be assessed thereon, may be brought and commenced against the maker hereof in the Division Court for the division wherein the head office or any agency of the insurer is located.

\$.....

.....
Signature of Insured

.....
Post Office Address

R.S.O. 1937, c. 256, Sched. B.

SCHEDULE C

(Section 279)

No..... Term of licence.....to.....

DEPARTMENT OF INSURANCE ONTARIO

RECIPROCAL INSURANCE LICENCE

This is to certify that.....
being an exchange within the meaning of *The Insurance Act*, has complied with the requirements of the said Act; and the subscribers of the said exchange are hereby licensed and authorized for and during the term beginning on the.....day of....., 19...., and ending on the.....day of....., 19...., to exchange reciprocal contracts of indemnity or inter-insurance (*here state class of insurance*).

.....
Superintendent of Insurance

R.S.O. 1937, c. 256, Sched. C.

CHAPTER 184

The Interpretation Act

1. The provisions of this Act shall apply to every Act of the Legislature contained in these Revised Statutes or hereafter passed, except in so far as any such provision, Application of Act.

(a) is inconsistent with the intent or object of the Act; or

(b) would give to any word, expression or clause of the Act an interpretation inconsistent with the context; or

(c) is in the Act declared not applicable thereto. R.S.O. 1937, c. 1, s. 1.

2. Where an Act contains an interpretation section or provision, it shall be read and construed as subject to the exceptions contained in section 1. R.S.O. 1937, c. 1, s. 2. Interpretation sections in other Acts.

3. The provisions of this Act shall apply to the construction thereof and to the words and expressions used therein. R.S.O. 1937, c. 1, s. 3. Application to the Act itself.

RULES OF CONSTRUCTION

4. The law shall be considered as always speaking, and where any matter or thing is expressed in the present tense, it is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its true intent and meaning. R.S.O. 1937, c. 1, s. 4. Law always speaking.

5. Where an Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any Order in Council, order, warrant, scheme, letters patent, rules, regulations or by-laws, to give notices, to prescribe forms or to do any other thing for the purposes of the Act, that power, unless the contrary intention appears, may be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction that any instrument made under the power, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, shall not come into operation until the Act comes into operation. R.S.O. 1937, c. 1, s. 5. What may be done under an Act before date of commencement.

Meaning of expressions used in instruments issued under any Act.

6. Where any Act confers power to make, grant or issue any Order in Council, order, warrant, scheme, letters patent, rules, regulations or by-laws, expressions used therein, unless the contrary intention appears, shall have the same meaning as in the Act conferring the power. R.S.O. 1937, c. 1, s. 6.

Judicial notice.

7. Every Act shall, unless by express provision it is declared to be a private Act, be deemed to be a public Act, and shall be judicially noticed by all judges, justices of the peace, and others, without being specially pleaded. R.S.O. 1937, c. 1, s. 7.

Effect of preamble.

8. The preamble of an Act shall be deemed a part thereof and intended to assist in explaining the purport and object of the Act. R.S.O. 1937, c. 1, s. 8.

Marginal notes, headings, etc., not part of Act.

9. The marginal notes and headings in the body of an Act and the references to former enactments shall form no part of the Act but shall be deemed to be inserted for convenience of reference only. R.S.O. 1937, c. 1, s. 9.

All Acts remedial.

10. Every Act shall be deemed remedial, whether its immediate purport be to direct the doing of anything which the Legislature deems to be for the public good, or to prevent or punish the doing of anything which it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to the true intent, meaning and spirit thereof. R.S.O. 1937, c. 1, s. 10.

The Crown.

11. No Act shall affect the rights of His Majesty, His Heirs or Successors, unless it is expressly stated therein that His Majesty shall be bound thereby. R.S.O. 1937, c. 1, s. 11.

Private Acts.

12. No Act of the nature of a private Act shall affect the rights of any person, or body corporate, politic or collegiate, such only excepted as are therein mentioned or referred to. R.S.O. 1937, c. 1, s. 12.

REPEAL, AMENDMENT AND CONSOLIDATION

Reservation of power to repeal or amend.

13. Every Act shall be construed as reserving to the Legislature the power of repealing or amending it, and of revoking, restricting, or modifying any power, privilege or advantage thereby vested in or granted to any person or party, whenever the repeal, amendment, revocation, restriction, or modification is deemed by the Legislature to be required for the public good. R.S.O. 1937, c. 1, s. 13.

14.—(1) Where an Act is repealed or where a regulation ^{Repeal, effect of.} is revoked, the repeal or revocation shall not, save as in this Act otherwise provided,

- (a) revive any Act, regulation or thing not in force or existing at the time at which the repeal or revocation takes effect;
- (b) affect the previous operation of any Act, regulation or thing so repealed or revoked;
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, regulation or thing so repealed or revoked;
- (d) affect any offence committed against any Act, regulation or thing so repealed or revoked, or any penalty or forfeiture or punishment incurred in respect thereof;
- (e) affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Act, regulation or thing had not been so repealed or revoked.
R.S.O. 1937, c. 1, s. 14.

(2) If other provisions are substituted for those so repealed ^{When other provisions substituted.} or revoked,

- (a) all officers and persons acting under the Act, regulation or thing so repealed or revoked, shall continue to act as if appointed under the provisions so substituted until others are appointed in their stead;
- (b) all proceedings taken under the Act, regulation or thing so repealed or revoked, shall be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be;
- (c) in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights existing or accruing under the Act, regulation or thing so repealed or revoked, or in any other proceeding in relation to matters which have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed so far as it can be adopted; and
- (d) if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions of the Act, regula-

tion or thing whereby such other provisions are substituted, the penalty, forfeiture or punishment, if imposed or adjudged after such repeal or revocation, shall be reduced or mitigated accordingly. R.S.O. 1937, c. 1, s. 15.

Re-enactment, amendment, consolidation and revision.

15. Where any Act is repealed and other provisions are substituted by way of re-enactment, amendment, revision or consolidation,

- (a) all regulations, orders, ordinances, rules and by-laws made under the repealed Act shall continue good and valid in so far as they are not inconsistent with the substituted Act until they are annulled and others made in their stead; and
- (b) any reference in any unrepealed Act, or in any rule, order or regulation made thereunder to such repealed Act, shall, as regards any subsequent transaction, matter or thing be held and construed to be a reference to the provisions of the substituted Act relating to the same subject matter, and if there is no provision in the substituted Act relating to the same subject matter, the repealed Act shall stand good, and be read and construed as unrepealed in so far, and in so far only, as is necessary to support, maintain or give effect to such unrepealed Act, or such rule, order or regulation made thereunder. R.S.O. 1937, c. 1, s. 16; 1947, c. 101, s. 10.

Repeal of Act not a declaration that Act was in force.

16. The repeal of an Act shall not be deemed to be or to involve a declaration that such Act was, or was considered by the Legislature to have been previously in force. R.S.O. 1937, c. 1, s. 17.

Repeal or amendment not a declaration of previous state of the law.

17. The repeal or amendment of an Act shall not be deemed to be or to involve any declaration as to the previous state of the law. R.S.O. 1937, c. 1, s. 18.

Amendment of Act not a declaration of different state of law.

18. The amendment of an Act shall not be deemed to be or to involve a declaration that the law under such Act was, or was considered by the Legislature to have been, different from the law as it has become under such Act as so amended. R.S.O. 1937, c. 1, s. 19.

Re-enactment, etc. not an adoption of judicial construction.

19. The Legislature shall not, by re-enacting an Act, or by revising, consolidating or amending the same, be deemed to have adopted the construction which has by judicial decision or otherwise, been placed upon the language used in such Act or upon similar language. R.S.O. 1937, c. 1, s. 20.

PROCLAMATIONS

20. Where the Lieutenant-Governor is authorized to do any act by proclamation, such proclamation is to be understood to be a proclamation issued under an order of the Lieutenant-Governor in Council; but it shall not be necessary that it be mentioned in the proclamation that it is issued under such order. R.S.O. 1937, c. 1, s. 21.

Lieutenant-Governor acting by proclamation.

CROWN APPOINTMENTS

21. Authority to the Lieutenant-Governor to make an appointment to any office, by commission or otherwise, shall be deemed authority to appoint during pleasure. R.S.O. 1937, c. 1, s. 22.

Tenure of office.

OATHS

22.—(1) Where by an Act of the Legislature or by a rule of the Assembly, or by an order, regulation or commission made or issued by the Lieutenant-Governor in Council under a law authorizing him to require the taking of evidence under oath, an oath is authorized or directed to be made, taken or administered, the oath may be administered and a certificate of its having been made, taken or administered may be given by anyone named in the Act, rule, order, regulation or commission, or by a judge of any court, a notary public, justice of the peace, or commissioner for taking affidavits, having authority or jurisdiction in the place where the oath is administered.

Administration of oaths.

(2) Any officer authorized to administer an oath or take an affidavit may take any declaration authorized or required by an Act of the Legislature. R.S.O. 1937, c. 1, s. 23 (1, 2).

Taking declarations.

(3) In every case where an oath, affirmation or declaration is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same and to certify to its having been made. R.S.O. 1937, c. 1, s. 23 (4).

Authority generally.

REGULATIONS

23. The Lieutenant-Governor in Council may make regulations for the due enforcement and carrying into effect of any Act of the Legislature, and may prescribe forms, and may, where there is no provision in the Act, fix fees to be charged by all officers and persons by whom anything is required to be done. R.S.O. 1937, c. 1, s. 24.

Regulations.

IMPRISONMENT

Imprison-
ment,
place of.

24. If in any Act any person is directed to be imprisoned or committed to prison, the imprisonment or committal shall, if no other place is mentioned or provided by law, be in or to the common jail of the locality in which the order for the imprisonment is made, or if there be no common jail there, then in or to that common jail which is nearest to such locality. R.S.O. 1937, c. 1, s. 25.

Hard
labour.

25. Where power to impose imprisonment is conferred by any Act it shall authorize the imposing of imprisonment with hard labour. R.S.O. 1937, c. 1, s. 26.

OFFENCE UNDER MORE THAN ONE PROVISION

Act con-
stituting
offence
under more
than one
provision.

26. Where an act or omission constitutes an offence under two or more Acts, or an offence both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same act or omission. R.S.O. 1937, c. 1, s. 27.

CORPORATIONS

Effect of
words con-
stituting a
corporation.

27. In every Act, unless the contrary intention appears, words making any association or number of persons a corporation or body politic and corporate shall,

- (a) vest in the corporation power to sue and be sued, to contract and be contracted with by their corporate name, to have a common seal, to alter or change the same at their pleasure, to have perpetual succession, to acquire and hold personal property or moveables for the purpose for which the corporation is constituted, and to alienate the same at pleasure;
- (b) vest in a majority of the members of the corporation the power to bind the others by their acts; and
- (c) exempt individual members of the corporation from personal liability for its debts, obligations or acts if they do not contravene the provisions of the Act incorporating them. R.S.O. 1937, c. 1, s. 28.

IMPLIED PROVISIONS

Implied
provisions,
as to juris-
diction;

28. In every Act, unless the contrary intention appears,

- (a) where anything is directed to be done by or before a magistrate, or a justice of the peace, or other public

functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where it is to be done;

- (b) where power is given to any person, officer or functionary to do or to enforce the doing of any act or thing, all such powers shall be understood to be also given as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing; implied powers;
- (c) where an act or thing is required to be done by more than two persons, a majority of them may do it; acts to be done by more than two;
- (d) where forms are prescribed, deviations therefrom not affecting the substance or calculated to mislead shall not vitiate them; deviation from forms;
- (e) where a power is conferred or a duty imposed on the holder of any office as such, the power may be exercised and the duty shall be performed from time to time as occasion requires; powers and duties to be exercised and performed from time to time;
- (f) where a power is conferred or a duty imposed on the holder of any office as such, the power may be exercised and the duty shall be performed by the holder for the time being thereof; to be exercised and performed by holder of office for time being;
- (g) where power is conferred to make by-laws, regulations, rules or orders, it shall include power to alter or revoke the same from time to time and make others; power to make by-laws, etc., to confer power to alter;
- (h) where the time limited by any Act for any proceeding or for the doing of anything under its provisions expires or falls upon a holiday, the time so limited shall extend to, and the thing may be done on the day next following which is not a holiday; computation of time where time limited expires on a holiday;
- (i) words importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one, and females as well as males and the converse; number and gender;
- (j) a word interpreted in the singular number shall have a corresponding meaning when used in the plural; idem;
R.S.O. 1937, c. 1, s. 29, cls. (a-j).
- (k) words authorizing the appointment of any public officer or functionary, or any deputy, shall include the power of removing him, reappointing him, or appointing another in his stead or to act in his stead, from time to time in the discretion of the authority in words authorizing appointment include power to remove;

whom the power of appointment is vested; R.S.O. 1937, c. 1, s. 29, cl. (k); 1942, c. 34, s. 17 (1).

directions to public officer to apply to his successors and deputy;

- (l) words directing or empowering a public officer or functionary to do any act or thing, or otherwise applying to him by his name of office, shall include his successors in such office and his or their lawful deputy;

reference to sections by numbers;

- (m) where reference is made by number to two or more sections, subsections, paragraphs or clauses in any Act, the number first mentioned and the number last mentioned shall both be deemed to be included in the reference; R.S.O. 1937, c. 1, s. 29, cls. (l, m).

words authorizing appointment include power to appoint deputy.

- (n) words authorizing the appointment of any public officer or functionary or the appointment of any person to administer any Act shall include the power of appointing a deputy to perform and have all the powers and authority of such public officer or functionary or person to be exercised in such manner and upon such occasions as may be specified in the instrument appointing him or such limited powers and authority as the instrument may prescribe. 1942, c. 34, s. 17 (2).

PROCEDURE

Appeals to Court of Appeal.

29. Where an appeal to the Court of Appeal is permitted by any Act the appeal shall be made in the time and manner prescribed by the rules of court. R.S.O. 1937, c. 1, s. 30.

Application to court or judge, procedure.

30. Unless otherwise provided, where an application to a court or a judge is permitted by any Act the application may be made by originating notice in the manner prescribed by the rules of court. R.S.O. 1937, c. 1, s. 31.

WORDS AND TERMS

Words and terms.

31. In every Act, unless the context otherwise requires,

- (a) "Act" includes enactment;
- (b) "affidavit", in the case of persons allowed by law to affirm or declare instead of swearing, includes affirmation and declaration;
- (c) "Assembly" means the Legislative Assembly of Ontario;
- (d) "county" includes two or more counties united for purposes to which the Act relates;

- (e) "Court of Appeal" means The Court of Appeal for Ontario;
- (f) "felony" means any crime which before the passing of *The Criminal Code, 1892* (Canada) would have been a felony under the law of Canada;
- (g) "Great Seal" means the Great Seal of Ontario;
- (h) "herein" used in any section of an Act relates to the whole Act and not to that section only;
- (i) "High Court" means The High Court of Justice for Ontario;
- (j) "His Majesty", "Her Majesty", "The King", "The Queen", or "The Crown" means the Sovereign of Great Britain, Ireland and the British Dominions beyond the Seas for the time being;
- (k) "holiday" includes Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday or the day fixed by proclamation of the Governor-General for the celebration of the birthday of the reigning Sovereign, Victoria Day, Dominion Day, Labour Day, Remembrance Day, and any day appointed by proclamation of the Governor-General or the Lieutenant-Governor as a public holiday or for a general fast or thanksgiving; and whenever any holiday except Remembrance Day falls on a Sunday, the day next following shall be in lieu thereof a holiday;
- (l) "justice of the peace" includes two or more justices of the peace or magistrates assembled or acting together;
- (m) "legally qualified medical practitioner", "duly qualified medical practitioner", or any words importing legal recognition of any person as a medical practitioner or member of the medical profession, means a person registered under *The Medical Act*;
- (n) "Lieutenant-Governor" means the Lieutenant-Governor of Ontario, or the chief executive officer or administrator for the time being carrying on the government of Ontario, by whatever title he is designated;
- (o) "Lieutenant-Governor in Council" means the Lieutenant-Governor of Ontario, or person administering the government of Ontario for the time being, acting by and with the advice of the Executive Council of Ontario;

Rev. Stat.,
c. 228.

R.S.C. 1927,
c. 36.

- (p) "Lower Canada" means all that part of Canada which formerly constituted the Province of Lower Canada;
- (q) "magistrate" includes a deputy magistrate and a police magistrate and deputy police magistrate within the meaning of the *Criminal Code* (Canada);
- (r) "may" shall be construed as permissive;
- (s) "mental defective" and "mentally defective person" means a person in whom there is a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, and who requires care, supervision and control for his own protection or welfare or for the protection of others;
- (t) "mental deficiency" means the condition of mind of a mental defective;
- (u) "mentally ill person" means a person other than a mental defective who is suffering from such a disorder of the mind that he requires care, supervision and control for his own protection or welfare, or for the protection of others;
- (v) "mental illness" means the condition of mind of a mentally ill person;
- (w) "mental incompetent" and "mentally incompetent person" means a person,
 - (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
 - (ii) who is suffering from such a disorder of the mind, that he requires care, supervision and control for his protection and the protection of his property;
- (x) "mental incompetency" means the condition of mind of a mentally incompetent person;
- (y) "misdemeanour" means any crime which before the passing of *The Criminal Code, 1892* (Canada) would have been a misdemeanour under the law of Canada;
- (z) "month" means a calendar month;
- (za) "newspaper" in any statute requiring publication

- in a newspaper means a printed publication in sheet form, intended for general circulation, published regularly at intervals of not longer than a week, consisting in great part of news of current events of general interest and sold to the public and to regular subscribers upon a *bona fide* subscription list;
- (zb) "now", "next", "heretofore" and "hereafter" shall be construed as having reference to the date of the coming into force of the Act;
- (zc) "oath", in the case of persons allowed by law to affirm or declare instead of swearing, includes affirmation and declaration;
- (zd) "peace officer" includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, and justice of the peace, and also the superintendent, governor, jailer, keeper, guard or any other officer or permanent employee of a jail or reformatory and also any police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process;
- (ze) "person" includes any body corporate or politic, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- (zf) "proclamation" means a proclamation under the Great Seal;
- (zg) "registrar" includes a deputy registrar; R.S.O. 1937, c. 1, s. 32, cls. (a-zg).
- (zh) "Rules Committee" means Rules Committee established under *The Judicature Act*; 1941, c. 55, s. 15. Rev. Stat.,
c. 190.
- (zi) "rules of court" when used in relation to any court means rules made by the authority having power to make rules or orders regulating the practice and procedure of such court, or for the purpose of any Act directing or authorizing anything to be done by rules of court;
- (zj) "security" means sufficient security, and "sureties" means sufficient sureties, and where these words are used, one person shall be sufficient therefor unless otherwise expressly required;
- (zk) "shall" shall be construed as imperative;

- (zl) "Supreme Court" means Supreme Court of Ontario;
- (zm) "swear", in the case of persons for the time being allowed by law to affirm or declare instead of swearing, includes affirm and declare; and "sworn" has a corresponding meaning;
- (zn) "Upper Canada" means all that part of Canada which formerly constituted the Province of Upper Canada;
- (zo) "writing", "written", or any term of like import, includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any other mode in a visible form;
- (zp) "year" means a calendar year. R.S.O. 1937, c. 1, s. 32, cls. (zh-zo).

SPECIAL INTERPRETATION CLAUSES

Rev. Stat.,
c. 190.

32. The interpretation section of *The Judicature Act* shall extend to all Acts relating to legal matters. R.S.O. 1937, c. 1, s. 33.

Rev. Stat.,
c. 243.

33. The interpretation section of *The Municipal Act* shall extend to all Acts relating to municipal matters. R.S.O. 1937, c. 1, s. 34.

CHAPTER 185

The Interprovincial Drainage Act

- 1.** Wherever for the purpose of securing better drainage it is deemed necessary or expedient to extend drainage works from Ontario into or through lands in an adjoining province, or to extend a drainage work from an adjoining province, into or through lands in Ontario, the Lieutenant-Governor in Council may authorize the Minister of Public Works to enter into an agreement with a designated officer of the adjoining province as to the proportion of the cost of the work in the adjoining province to be borne and paid by Ontario and as to the proportion of the cost of the work in Ontario to be borne and paid by the adjoining province. R.S.O. 1937, c. 58, s. 1. Extending inter-provincial drainage work.
- 2.** Where a drain extends from an adjoining province into and through lands in Ontario the Minister of Public Works may order the municipality into which the drain extends to provide for the construction of the necessary drainage work and thereupon all the provisions of *The Municipal Drainage Act* shall apply *mutatis mutandis* to such drain and the contribution to the work from the other province shall be paid to such municipality on the proper completion of the work. R.S.O. 1937, c. 58, s. 2. Extension of drain from adjoining province. Rev. Stat., c. 246.
- 3.** Where a drain extends from Ontario into and through lands in an adjoining province, the Minister of Public Works may order the municipality in Ontario in which the lands affected by the drainage work are situate, to provide funds to pay for the proportion of the cost of the work in the adjoining province to be borne and paid by Ontario, and thereupon all the provisions of *The Municipal Drainage Act* shall apply *mutatis mutandis* to such drain. R.S.O. 1937, c. 58, s. 3. Apportionment of cost.
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CHAPTER 186

The Investigation of Titles Act

1. In this Act,

Interpre-
tation.

- (a) "claim" means any right, title, interest, claim or demand of any kind or nature whatsoever affecting land set forth in, based upon or arising out of a registered instrument, and without limiting the generality of the foregoing, includes mortgages, liens, easements, agreements, contracts, options, charges, annuities, leases, dower rights whether inchoate or otherwise, and restrictions as to use of land or other encumbrance affecting land, but does not include any highway, public lane, unregistered right of way or other easement or right which any person is openly enjoying and using or any claim imposed by any statutory enactment;
- (b) "instrument" includes every Crown grant, and Order in Council of Canada and of Ontario, every deed, conveyance, mortgage, assignment of mortgage, certificate of discharge of mortgage, assurance, lease, bond, release, discharge, power of attorney under which any such instrument is executed, every bond or agreement for the sale or purchase of land, will, probate of will, grant of administration, caution under *The Devolution of Estates Act* or renewal thereof, municipal by-law, certificate of proceedings in any court, judgment, or order of foreclosure and every other certificate of judgment or order of any court affecting any interest in or title to land, and certificate of amalgamation of loan corporations, every certificate of payment of taxes, granted under the corporate seal of the county, city or town by the treasurer, every sheriff's and treasurer's deed of land sold by virtue of his office, every contract in writing, every order and proceeding in mental incompetency, bankruptcy and insolvency, every plan of a survey or subdivision of land, and every other instrument whereby land may be transferred, disposed of, charged, encumbered or affected in any wise, affecting land in Ontario;
- (c) "land" includes lands, tenements, hereditaments and appurtenances and any estate or interest therein;

- (d) "owner" means a person entitled to a freehold or other estate or interest in land at law or in equity, in possession, in futurity, or in expectancy. R.S.O. 1937, c. 171, s. 1.

Title for
forty years
to be good.

2.—(1) From and after the 1st day of June, 1930, no person in dealing with land shall be required to show that he is lawfully entitled to such land as owner thereof through a good and sufficient chain of title, save and except during the period of forty years immediately preceding the date of such dealing as aforesaid, and no claim which has been in existence longer than the forty year period shall affect such land, unless such claim shall have been acknowledged or specifically referred to or contained in an instrument registered against such land within the forty year period or unless a notice is registered against such land as provided in subsections 5, 6, 7 and 9.

Notice of
claim.

No notice
necessary in
certain cases.

(2) Where a person is shown by the books of a registry office to be the owner of a freehold or leasehold estate in land or of an equity of redemption therein prior to any forty year period and is continuously shown on the books from time to time during the forty year period and thereafter as the owner of either a freehold or leasehold estate in the same land or of an equity of redemption therein or any of them, such person's claim to the land shall not be affected by failure to register the notice as required by subsection 1.

Dower, while
husband re-
mains owner.

(3) Notwithstanding subsection 1, it shall not be necessary for a wife to register a claim with respect to her inchoate right to dower in land so long as her husband is wholly or in part the owner thereof.

Dower after
alienation.

(4) In the case of a claim registered in respect of an inchoate right to dower in lands alienated by a husband without bar of dower, the period of forty years mentioned in subsection 1 shall run from the date of such alienation.

Registration
of notice of
claim.

(5) Upon the 1st day of June, 1929, and within one year thereafter any person having a claim against any land, which claim has been in existence for forty years or more prior to the 1st day of June, 1929, but in respect to which claim no notice of its existence has been given, acknowledged, or specifically referred to or contained in an instrument registered against such land within forty years prior to the 1st day of June, 1929, or any person on his behalf may register in the proper registry office a notice in which shall be set forth the claimant's full name and address and a description of the land and a detailed statement of such claim, verified by the affidavit of the person registering such notice.

(6) Any person having a claim against land, or any person on his behalf, may within forty years from the date of the registration of any instrument in which the claim is acknowledged, set forth, or referred to, or on which the claim is based, or out of which the claim arises, register a notice of such claim in the manner set out in subsection 5, and such registration shall constitute a notice of such claim for a further period of forty years. Registering notice of claim.

(7) Before a notice expires it may be re-registered and so on from time to time as long as the person registering the same or any person claiming under him deems it necessary, and every re-registered notice shall continue in force for forty years from the date of the registration thereof. Re-registration.

(8) An instrument, the entry of which has been ruled off the abstract index as provided by section 72 of *The Registry Act* shall not constitute an instrument under this Act upon which a claim shall be based, or one out of which a claim may arise affecting the lands in respect of which the entry of the instrument has been ruled off, notwithstanding that such claim shall be acknowledged, referred to, or set forth in any such instrument. Claim not to be founded on certain instruments. Rev. Stat., c. 336.

(9) Notwithstanding subsections 5, 6 and 7, any person having a claim against land which by the provisions of this Act would have expired, may register notice of such claim at any subsequent time provided there shall have been no intermediate registered dealing with such land, and such registration shall have the same effect as if done within the time limited by subsections 5, 6 and 7. Time for registering notice.

(10) The registration of a notice as provided in subsections 5, 6, 7 and 9 shall not in any way validate a claim which has otherwise expired. Registration not to validate expired claim.

(11) The registrar shall be entitled to a fee of \$1 for registering the notice referred to in subsections 5, 6, 7 and 9. Fees.

(12) The provisions of this Act shall have effect notwithstanding any statute or any rule made under the authority of a statute or any rule of law, and wherever there is any conflict between the provisions of this Act, and any such statute, rule or rule of law, the provisions of this Act shall prevail. Act to prevail over other provisions.
R.S.O. 1937, c. 171, s. 2.

3. This Act shall not apply to land entered on the register in any land titles office, nor shall this Act affect the interest of the Crown in land where no patent has issued. Act not to apply to land titles offices. R.S.O. 1937, c. 171, s. 3.

CHAPTER 187

The Investment Contracts Act

1. In this Act,

Interpre-
tation.

- (a) "filed" means filed under this Act;
- (b) "investment contract" means a contract, agreement, certificate, instrument or writing containing an undertaking by an issuer to pay the holder thereof, or his assignee, or personal representative, or other person, a stated or determinable maturity value in cash or its equivalent on a fixed or determinable date and containing optional settlement, cash surrender or loan values prior to or after maturity, the consideration for which consists of payments made or to be made to the issuer in instalments or periodically, or of a single sum, according to a plan fixed by the contract, whether or not the holder is or may be entitled to share in the profits or earnings of, or to receive additional credits or sums from, the issuer, but does not include a contract within the meaning of *The Insurance Act*;
Rev. Stat.,
c. 183.
- (c) "issuer" means any corporation which offers for sale, sells, makes or enters into investment contracts of its own issue, but does not include an insurer within the meaning of *The Insurance Act*, or a corporation within the meaning of *The Loan and Trust Corporations Act*;
Rev. Stat.,
cc. 183, 214.
- (d) "qualified assets" means,
 - (i) cash,
 - (ii) first mortgages on improved real estate and first mortgages made under *The Dominion Housing Act, 1935* (Canada), *The National Housing Act, 1938* (Canada), or *The National Housing Act, 1944* (Canada),
1935, c. 58;
1938, c. 49;
1944-45, c. 46
(Can.).
 - (iii) bonds, debentures, stocks and other securities of the classes authorized under *The Companies Act* for the investment of the funds of joint stock insurance companies incorporated under the law of Ontario or authorized under *The Canadian and British Insurance Companies Act, 1932* (Canada) for the investment of the funds of companies registered thereunder,
Rev. Stat.,
c. 59.
1932, c. 46
(Can.).

- (iv) real property acquired by foreclosure or in satisfaction of a debt and held for a period of less than seven years, and
- (v) such other investments or securities as may be designated by regulation under this Act;
- (e) "prescribed" means prescribed by the regulations;
- (f) "registered" means registered under this Act;
- (g) "regulations" means regulations made under this Act;
- (h) "salesman" means a person employed, appointed or authorized by an issuer to sell investment contracts;
- (i) "Superintendent" means Superintendent of Insurance. 1948, c. 49, s. 1.

Filing
form of
contract.

2.—(1) No person shall issue for sale or offer for sale or sell an investment contract unless a copy of the form thereof has been filed with the Superintendent.

Forms not
to be filed.

(2) The Superintendent shall accept for filing a copy of the form of any investment contract tendered for filing unless the sale of investment contracts in such form would be inequitable or tend to work a fraud upon purchasers thereof or be against the public interest. 1948, c. 49, s. 2.

Who may
issue
contract.

3.—(1) No person shall issue for sale an investment contract unless such person is registered as an issuer.

Who may
sell
contract.

(2) No person shall offer for sale or sell an investment contract unless such person is,

- (a) registered as an issuer; or
- (b) recorded by the Superintendent as an executive officer of a registered issuer; or
- (c) registered as a salesman. 1948, c. 49, s. 3.

What cor-
porations
may be
registered.

4. No corporation shall be registered under this Act as an issuer unless,

- (a) there has been filed with the Superintendent,
 - (i) a certified copy of the Act, letters patent or other instrument of incorporation of such corporation,
 - (ii) a certified list of the names and addresses of the executive officers of such corporation,

- (iii) a certified copy of the balance sheet of such corporation as at the close of its last completed fiscal year and its auditor's report thereon, and
 - (iv) copies of all forms of investment contracts proposed to be issued by such corporation for sale in Ontario;
- (b) at least \$100,000 of its authorized capital stock has been subscribed and paid in, in cash, and is unimpaired;
- (c) arrangements satisfactory to the Superintendent have been made for the deposit with a trust company, chartered bank or other suitable depository or depositories within Canada of qualified assets aggregating in amount, when valued as provided in section 20, not less at any time than the amount for which such corporation, under the terms of its investment contracts, is liable as of such time to pay in cash to the holders of all its investment contracts then outstanding, or aggregating such lesser amount as the Superintendent may deem appropriate in the circumstances; provided that, in the case of a corporation which maintains with a trust company, chartered bank or other suitable depository or depositories outside Ontario but within Canada a deposit or deposits of qualified assets in such an aggregate amount or other deposit satisfactory to the Superintendent, no further deposit shall be required. 1948, c. 49, s. 4; 1950, c. 32, s. 1.

5.—(1) No person shall be registered as a salesman unless there has been filed with the Superintendent a written notice to the Superintendent from a registered issuer that such person has been employed, appointed or authorized to sell investment contracts issued by such issuer. Registration requirements.

(2) Termination of the employment, appointment or authorization of a person employed, appointed or authorized to sell investment contracts issued by an issuer which has filed with the Superintendent a written notice pursuant to subsection 1 shall operate as a suspension of the registration of such person as a salesman. 1948, c. 49, s. 5. Suspension of registration.

6. Every application for registration shall be made to the Superintendent in writing upon the prescribed form and shall be accompanied by the prescribed fee. 1948, c. 49, s. 6. Application for registration.

7. Every applicant for registration shall state in the application an address for service in Ontario and all notices Address for service.

under this Act or the regulations shall be sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. 1948, c. 49, s. 7.

Renewal of
registration.

8. Every registration and renewal of registration shall lapse on the 31st day of March but any registered issuer or salesman desiring renewal of registration shall on or before the 21st day of March make application for renewal of registration upon the prescribed form with the prescribed fee. 1948, c. 49, s. 7.

Granting of
registration
or renewal
to,

9. The Superintendent shall grant registration or renewal of registration,

issuer;

(a) to an issuer applying therefor where the applicant is suitable for registration and the sale of investment contracts issued by such issuer would not be inequitable or tend to work a fraud upon purchasers thereof or be against the public interest; and

salesman.

(b) to a salesman applying therefor where the applicant is suitable for registration and the proposed registration is not objectionable. 1948, c. 49, s. 9.

Liability on
contracts.

10. Every registered issuer shall, at all times,

(a) maintain reserves for the payment of its outstanding investment contracts that, together with all future payments to be received by the issuer on such investment contracts, or the portions of such future payments still to be applied to reserves, and with accumulations of interest at an assumed rate provided in the contracts, such rate not to exceed a rate approved by the Superintendent, will attain the face or maturity value specified in the contracts when due, or the amount payable in accordance with the terms of the contracts; or

(b) maintain reserves of such lesser amount as the Superintendent may deem appropriate in the circumstances,

provided such reserves shall at no time be less than the amount for which such registered issuer, under the terms of its investment contracts, is liable to pay in cash to the holders of all its investment contracts then outstanding. 1950, c. 32, s. 2, *part*.

Investment
of funds.

Rev. Stat.,
c. 59,

11. Subject to section 12, a registered issuer may invest its funds only in investments in which a joint stock insurance company may invest its funds under *The Companies Act*, or in

investments in which a company registered under *The Canadian and British Insurance Companies Act, 1932* (Canada) may invest its funds. 1950, c. 32, s. 2, *part*. 1932, c. 46 (Can.).

12.—(1) A registered issuer may acquire and hold for its own use and benefit such real property as is necessary for the transaction of its business and upon complying with and subject to *The Mortmain and Charitable Uses Act* may acquire or hold or construct a building larger than is required for the transaction of its business and may lease any part of such building not so required. Power to acquire and hold real property. Rev. Stat., c. 241.

(2) A registered issuer may acquire and hold such real property as is *bona fide* mortgaged to it by way of security, and such real property as is acquired by it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of such real property, but such issuer shall sell any such last-mentioned real property within seven years after it has been so acquired. 1950, c. 32, s. 2, *part*. Idem.

13.—(1) The Superintendent may suspend or cancel any registration upon any grounds which would justify refusal to grant registration or renewal of registration. 1948, c. 49, s. 10 (1). Suspension or cancellation of registration.

(2) The Superintendent may suspend or cancel the registration of an issuer where it appears to him from the statements and reports filed with him or from an inspection or valuation that the issuer will be unable to provide for the payment of its investment contracts at maturity. 1948, c. 49, s. 10 (2); 1950, c. 32, s. 3. Idem.

14. Notwithstanding any order of the Superintendent, a further application may be made upon new or other material or where it is clear that material circumstances have changed. 1948, c. 49, s. 11. Further application for registration.

15.—(1) An applicant for registration or renewal of registration or any person who deems himself aggrieved by a decision of the Superintendent, may appeal therefrom to the Court of Appeal. Appeal.

(2) The appeal shall be set down for argument at the first sitting of the Court of Appeal which commences after the expiration of 30 days from the decision complained of. When to be set down.

(3) The practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court, in an action, Procedure.

Certificate.

(4) The Superintendent shall certify to the registrar of the Court of Appeal the decision appealed from, his reasons therefor, and the documents, inspection reports and evidence, if any, and such other information as he had before him in making the decision. 1948, c. 49, s. 12.

Filing statement.

16.—(1) Not later than 30 days after the expiration of each quarterly period ending March 31st, June 30th, September 30th and December 31st, every registered issuer shall file with the Superintendent a statement, certified to by its auditor, showing,

- (a) the amount on the last day of the quarterly period required by section 10 to be maintained as reserves by the issuer on all outstanding investment contracts;
- (b) all qualified assets on deposit on the last day of the quarterly period last ended with the trust company, chartered bank or other depository or depositaries within Canada approved by the Superintendent and the value, when valued as provided in section 20, of such qualified assets as at such date; and
- (c) such other information as the Superintendent may require. 1948, c. 49, s. 13 (1); 1950, c. 32, s. 4 (1).

Filing balance sheet.

(2) Not later than 90 days after the expiration of its fiscal year, every registered issuer shall file with the Superintendent a balance sheet and profit and loss statement for such completed fiscal year, certified by two of its directors and reported on by its auditor, and such other financial statements as the Superintendent may require. 1948, c. 49, s. 13 (2).

Market value of securities.

(3) The market value of all securities at the date of the statement shall be noted on the balance sheet. 1950, c. 32, s. 4 (2).

Auditor.

(4) The auditor of an issuer registered under this Act shall be a person or firm acceptable to the Superintendent. 1948, c. 49, s. 13 (3).

Inspection.

17.—(1) The Superintendent may at any time make or cause to be made an inspection of the books, documents and records of any issuer and of any salesman.

Access on inspection.

(2) Upon any such inspection, the Superintendent or his duly authorized representative shall be entitled to free access to all books of account, cash, securities, documents, bank accounts, vouchers, correspondence and records of every description of the issuer or salesman and no person shall with-

hold or destroy, conceal or refuse to furnish any information or thing reasonably required by the Superintendent for the purposes of the inspection. 1948, c. 49, s. 14.

18. The Superintendent may at any time require any issuer or salesman to submit for review any circulars, pamphlets, brochures, specimen contracts, application forms or other documents used by such issuer or salesman in connection with the sale of investment contracts. 1948, c. 49, s. 15.

19.—(1) Every registered issuer shall notify the Superintendent in writing of, Advertising and forms.
Notice of changes by issuer;

- (a) any change in its address for service;
- (b) any change in its executive officers; and
- (c) the commencement and termination of the employment, appointment or authorization of each of its salesmen.

(2) Every salesman registered under this Act shall notify the Superintendent in writing of, by salesman.

- (a) any change in his address for service; and
- (b) every commencement and termination of his employment, appointment or authorization by a registered issuer. 1948, c. 49, s. 16.

20. In any statement or balance sheet to be filed with the Superintendent under this Act, an issuer may value its assets as follows: Valuation of assets.

- (a) cash—in the amount thereof in lawful money of Canada;
- (b) first mortgages—in the amount of the balance of the principal sum secured thereby together with all unpaid interest accrued thereon;
- (c) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest which are not in default as to principal or interest and which in the opinion of the Superintendent are amply secured,
 - (i) if purchased at par, at the par value,
 - (ii) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made,

provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase;

- (d) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest which are in default as to principal or interest or which in the opinion of the Superintendent are not amply secured—at the market value at the date of the statement;
- (e) stocks—at the book value not in excess of the cost to the issuer and in the aggregate not in excess of the aggregate market value at the date of the statement; and
- (f) other securities—at the book value but not in excess of the aggregate market value at the date of the statement,

1932, c. 46
(Can.).

provided that, where any assets consist of securities whose market values are unduly depressed and in respect of which, companies registered under *The Canadian and British Insurance Companies Act, 1932* (Canada) have been authorized to use values in excess of such market values, such assets may, with the approval of the Superintendent, be valued as authorized under that Act; and provided further that if it appears to the Superintendent that the amount secured by mortgage on any parcel of real estate together with interest due and accrued thereon, is greater than the value of such parcel, or that such parcel is not sufficient for the loan and interest, he may procure an appraisalment thereof, and if from the appraised value it appears that such parcel of real estate is not adequate security for the loan and interest, such loan or mortgage shall be valued at an amount not to exceed the appraised value. 1950, c. 32, s. 5.

Extension
of time
prescribed.

21. The Superintendent may extend the time for the filing of any statement, balance sheet or other document, or the making of any application for renewal of registration under this Act. 1948, c. 49, s. 18.

Exempted
sales.

22. Nothing in this Act shall prevent the sale of an investment contract by or on behalf of the holder thereof where such sale is not made in the course of continued and successive transactions of like character or by a person whose usual business is the issuance or sale of investment contracts. 1948, c. 49, s. 19.

Penalties.

23.—(1) Every person who violates subsection 1 of section 2 or subsection 1 of section 3 or subsection 2 of sec-

tion 3 in respect of clause *a* or *b* thereof shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$5,000.

(2) Every person who violates subsection 2 of section 3 in *Idem.* respect of clause *c* shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$1,000.

(3) Every person who violates any other provision of this *Idem.* Act shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$500. 1948, c. 49, ss. 20, 22.

24. No proceedings to recover the penalties provided in *Recovery of* section 23 shall be instituted except, *penalties.*

- (a) with the written consent of the Attorney-General; and
- (b) within two years after the offence is committed. 1948, c. 49, s. 21.

25. The Lieutenant-Governor in Council may make *Regulations.* regulations,

- (a) prescribing the fees payable upon applications for registration and renewal of registration;
- (b) prescribing the forms for use under this Act;
- (c) designating investments or securities as qualified assets within the meaning of this Act;
- (d) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1948, c. 49, s. 23.

26. Notwithstanding anything in *The Securities Act*, *Rev. Stat., c. 351 not to apply.*

- (a) an investment contract shall be deemed not to be a security; and
- (b) an issuer shall be deemed not to be an investment company,

within the meaning of that Act. 1948, c. 49, s. 24.

CHAPTER 188

The Jails Act

1. In this Act,

Interpre-
tation.

(a) "inspector" means inspector appointed under *The Rev. Stat.,
Penal and Reform Institutions Inspection Act;* c. 273.

(b) "Minister" means Minister of Reform Institutions.
R.S.O. 1937, c. 388, s. 1, *amended*.

2. All jails in Ontario shall be prisons of the Supreme Prisons of
Court. R.S.O. 1937, c. 388, s. 2. Court.

3.—(1) Every jail erected in a provisional judicial district Jails in
under the authority of the Lieutenant-Governor in Council, districts.
or any building declared so to be by the Lieutenant-Governor
in Council, shall be a common jail of the district.

(2) The common jails and the industrial farms in the Jails and
several districts shall be respectively common jails and indus- industrial
trial farms for all the districts, and any court or magistrate farms com-
may direct the committal to any of them, either for safe mon for all
custody or for punishment of any person who may be lawfully districts.
committed by such court or magistrate to the common jail or
industrial farm of the district in which the order for committal
is made. R.S.O. 1937, c. 388, s. 3.

4. Any person imprisoned in a lock-up in a district may be Transfer
transferred by order of an inspector to the common jail in from lock-
the district town of the district. R.S.O. 1937, c. 388, s. 4. up to com-
mon jail.

5. The Lieutenant-Governor may appoint a jailer of every Appoint-
common jail who shall perform all the duties and be under ment of
and subject to all the liabilities that the jailers of the common jailer.
jails in counties perform and are subject to, and shall give
such security for the due performance of the duties of his office
as the Lieutenant-Governor in Council from time to time
prescribes, and every such jailer shall be paid out of money
appropriated by the Legislature for that purpose, such sums
of money annually as the Lieutenant-Governor in Council
may think reasonable for the services performed. R.S.O.
1937, c. 388, s. 5.

Vacancy.

6.—(1) In case of a vacancy, the sheriff shall appoint some proper person to act as jailer until an appointment is made by the Lieutenant-Governor in Council.

When
Sheriff to be
ex officio
jailer.

(2) The Lieutenant-Governor in Council may, upon the application of the sheriff, declare that the public interests do not require that another jailer of the jail at the district town shall be appointed, and thereupon the sheriff shall be *ex officio* jailer of such jail, and shall perform all the duties and shall be subject to all the liabilities of the office. R.S.O. 1937, c. 388, s. 6.

Plans for
jails.

7. Every jail shall be constructed and built according to a plan approved by the inspector, and sanctioned by the Lieutenant-Governor in Council, and no jail built after the 4th day of March, 1868, in any county, otherwise than according to a plan so approved and sanctioned, or which does not, after its completion, receive the approval of the inspector, shall be deemed to be in law the jail of such county. R.S.O. 1937, c. 388, s. 7.

Considera-
tion of
plans.

8. The inspector, before deciding upon the plan of a jail most proper to be adopted, or approving a jail after its completion, shall take into consideration,

- (a) the nature and extent of the ground upon which the jail has been or is to be built;
- (b) its relative situation to any street and buildings, and to any river or other water supply;
- (c) its comparative elevation and capability of being drained;
- (d) the material of which it has been or is to be constructed;
- (e) the necessity of guarding against cold and dampness, and of providing properly for ventilation and light for each corridor;
- (f) the proper classification of prisoners, having regard to age, sex, and cause of confinement;
- (g) the best means of ensuring their safe custody without the necessity of resorting to severe treatment;
- (h) the due accommodation of the jailer and turnkeys, so that they may have ready access to the prisoners and conveniently oversee them;
- (i) the prevention of any intercourse between prisoners and persons without the walls of the building;

- (j) the prevention of nuisances from whatever cause, and the necessity of providing proper and sufficient sanitary conveniences;
- (k) the combining provision, as well for the reformation of convicts, as far as may be practicable, as for their employment, in order that the jail may really serve as a place of correction;
- (l) the admission of prisoners to air and exercise without the walls of the building; and
- (m) the enclosure of the yard and premises with a secure wall. R.S.O. 1937, c. 388, s. 8.

9.—(1) If the inspector at any time finds that the common jail in any county or city is out of repair or is unsafe or unfit for the confinement of prisoners, or is not constructed or maintained in conformity with section 8, or does not afford sufficient space or room for the number of prisoners usually confined therein, he shall forthwith report the fact to the Lieutenant-Governor, and shall at the same time furnish a copy of such report to the council of such county or city. Unfit jails.

(2) The council shall thereupon appoint a special committee to confer with the inspector, and to arrange with him as to the repairs, alterations or additions that may be deemed necessary to remedy the defects reported upon, and to report the same to the council. Conference with inspector.

(3) If the inspector and the committee do not agree upon what repairs, alterations and additions are necessary, the matter shall be referred to the Lieutenant-Governor in Council to decide, and his decision shall be reported to the council. Case of disagreement.

(4) It shall be the duty of the council, by by-law, to provide for the making of the repairs, alterations or additions so arranged for and reported or decided upon, and for the appropriation of any money that may be required for that purpose, and in default thereof the council may be proceeded against at the instance and prosecution either of the Attorney-General or of any private prosecutor, to compel the making by the council of such repairs, alterations or additions. By-law for repairs.

(5) The inspector and the special committee of the county or city council shall, in arranging the particulars of the necessary repairs, alterations or additions, have due regard to the plan of the jail and to the ability of the council to meet the expense thereof, and in the case of alterations or additions, shall make the same as few and inexpensive as, in their opinion, Repairs to be proportioned to circumstances and resources of council.

the requirements of this Act, and of the public service will admit. R.S.O. 1937, c. 388, s. 9.

Duty of
inspector
when
vacancy
occurs.

10.—(1) Where a vacancy occurs in the office of jailer of any county jail, and the number of prisoners who have been confined in the jail during the three years ending on the 31st of December immediately preceding the occurrence of such vacancy did not exceed on an average six *per diem* in any of such years, it shall be the duty of the inspector to issue and transmit to the county council his certificate to that effect, and he shall also notify the sheriff of the county that the jail may be made subject to this section.

Power of
county
council.

(2) The council may, after the receipt of such certificate and within three months after the occurrence of such vacancy or at the next meeting of the council thereafter, by resolution declare that the public interests do not require the appointment of a jailer.

Sheriff may
agree to act
as jailer.

(3) The sheriff may thereupon agree with the council to act as jailer and for the remuneration to be allowed him for the performance of the duties of jailer, and in that event it shall not be necessary for the sheriff to appoint a jailer, but he shall himself be *ex officio* the jailer and shall, with such assistance as he deems necessary, perform all the duties and be subject to all the responsibilities of the office.

His duty.

Sheriff may
appoint
jailer
pro tempore
or act
himself.

(4) Pending the action of the council, the sheriff may either make a temporary appointment of a jailer, or may elect himself to perform the duties of the jailer, in which case he shall be *ex officio* jailer and shall perform all the duties and shall be subject to all the liabilities of the office.

Sheriff must
appoint
if council
fails to act.

(5) If the council does not within the time thereby limited pass the resolution mentioned in subsection 2, the sheriff shall forthwith thereafter appoint the temporary jailer or some other proper person to be the jailer.

Salary of
temporary
jailer or
sheriff.

(6) The temporary jailer or the sheriff, while acting under subsection 4, shall be paid at the same rate of salary as was paid to the jailer who held the office previous to the occurrence of the vacancy. R.S.O. 1937, c. 388, s. 10.

Transfer of
prisoners.

11.—(1) Where the number of prisoners confined in the jail of any county during two years does not exceed on an average four *per diem* for either of such years and the inspector reports to the Lieutenant-Governor that it would be proper that an agreement should be made for keeping the prisoners of such county in the jail of an adjoining county, the council of the first-mentioned county may agree with the council of

the adjoining county for keeping and maintaining such prisoners in the jail of the adjoining county.

(2) The two years shall be the two years ending on the 31st day of December immediately preceding the making of the agreement. How average reckoned. R.S.O. 1937, c. 388, s. 11.

12. If such agreement is made, the Lieutenant-Governor in Council may sanction the same and shall issue a proclamation declaring that from a day to be named therein the jail of the adjoining county shall also be the common jail of the first-mentioned county, and it shall so continue from that day until the Lieutenant-Governor in Council issues a proclamation terminating the agreement. Sanction by Lieutenant-Governor in Council. R.S.O. 1937, c. 388, s. 12.

13.—(1) No such first-mentioned proclamation shall be issued unless there is direct railway communication between the county towns of the two counties, nor until the inspector has reported that a sufficient lock-up for the safe custody of prisoners held or committed for trial in the first-mentioned county or in custody prior to their committal for trial or pending their removal to the county jail, reformatory or penitentiary has been provided in or near the county town of the first-mentioned county. Prerequisites to sanction.

(2) Nothing in this section shall prevent the imprisonment of any such prisoner in the jail of the adjoining county where the committing magistrate or the sheriff in charge deems it expedient that he should be imprisoned therein. Magistrate may commit to jail of adjoining county.

(3) The lock-up may be either the building theretofore used as the jail of the first-mentioned county or part thereof or some other building approved by the inspector. Lock-up. R.S.O. 1937, c. 388, s. 13.

14. The county at whose instance such first-mentioned proclamation has been issued shall bear all expenses incurred in respect of the conveying of any prisoners to or from the jail of the adjoining county in excess of those which would have been incurred had the prisoners been detained in a jail in the county town of the first-mentioned county. Expenses of transferring prisoners. R.S.O. 1937, c. 388, s. 14.

15. It shall be the duty of the county council to see that the lock-up is always kept in a proper condition for the reception of prisoners, and if the county council fails so to keep the same, the sheriff shall at the cost of the county do what is necessary in that behalf. Duty of county council as to lock-up. R.S.O. 1937, c. 388, s. 15.

Term for which agreement to be made.

Rev. Stat., c. 243.

How terminated.

Effect of proclamation as evidence.

Powers of Lieutenant-Governor in Council.

R.S.C. 1927, c. 163.

Cost of maintenance of prisoner;

and of his transfer;

how settled.

Detention in jail pending removal to reformatory.

16.—(1) An agreement made under section 11 shall continue, subject to any variation of the terms thereof by mutual agreement, for five years, and shall after such five years continue until varied by agreement, or if the councils are unable to agree, until varied by arbitration under *The Municipal Act*, but either council may at any time apply to the Lieutenant-Governor in Council to terminate the agreement.

(2) The Lieutenant-Governor in Council may terminate the agreement upon the application of either of the councils interested or of his own motion from a day to be named in his proclamation in that behalf and from such day the jail of the adjoining county shall cease to be the common jail of the first-mentioned county. R.S.O. 1937, c. 388, s. 16.

17. The issue of a proclamation under this Act shall be conclusive evidence that the events have happened and that the conditions exist which authorize the issue thereof. R.S.O. 1937, c. 388, s. 17.

18.—(1) The Lieutenant-Governor in Council shall, with respect to persons in custody undergoing imprisonment for offences against any law of Ontario or a by-law, or charged with any such offence, or for whose arrest a warrant has been issued, have all the powers conferred upon him in respect of offences against the laws of Canada by the *Prisons and Reformatories Act* (Canada), the provisions of which shall *mutatis mutandis* apply.

(2) The cost of the maintenance of a prisoner transferred under this section shall be paid and borne by the corporation of the county from the jail of which he is transferred, and in case of dispute as to the amount which is payable, shall be determined by the inspector.

(3) The expenses of the transfer of a prisoner under this section or under the *Prisons and Reformatories Act* (Canada) shall be paid by the corporation of the county from the jail of which the prisoner is transferred.

(4) In case of dispute as to the amount payable under subsection 2 or 3, the same shall be determined by the inspector. R.S.O. 1937, c. 388, s. 18.

19. Any person sentenced to imprisonment in any reformatory may be detained in the common jail until the proper officer requires the delivery to him of such person for conveyance to the reformatory in which he or she is to be imprisoned. R.S.O. 1937, c. 388, s. 19, *amended*.

20.—(1) The Lieutenant-Governor in Council may appoint provincial bailiffs, male or female, who shall be employed for the purpose of conveying any person confined in any of the common jails of Ontario or other place of custody and liable to be removed from thence to any provincial institution in which the person is lawfully directed to be confined, and also in the performance of such other duties as may be assigned to them by the inspector.

Appointment
of bailiffs.

(2) The inspector may authorize the employment of a suitable person to act as a temporary bailiff, and a temporary bailiff shall have the same powers and may perform the same duties as a provincial bailiff and shall be paid for such temporary services as the Minister may direct. R.S.O. 1937, c. 388, s. 20, *amended*.

Temporary
bailiffs.

21. Any such bailiff may convey any person from the jail or other place of custody to such provincial institution without further authority than the warrant of the inspector, which shall be issued in duplicate, and the person shall be received into the institution and there detained subject to the rules, regulations and discipline thereof until discharged by due course of law or removed under competent authority. R.S.O. 1937, c. 388, s. 21.

Warrant
for removal.

22. The bailiff, in the conveyance of the person to a provincial institution, may secure and convey him in and through any county or district through which the bailiff may have to pass, and until the person has been delivered to and placed in the institution, the bailiff shall have, in every part of Ontario, the same power and authority over and with regard to him, and to command the assistance of any person to prevent his escape, and to recapture him in case of an escape, as the sheriff of the county or district in which he was convicted or confined would have had in conveying him from one part to another of that county or district. R.S.O. 1937, c. 388, s. 22.

Powers of
bailiffs.

23. The bailiff shall give to the sheriff or jailer one of the duplicates of the warrant and a receipt for every person delivered to him, and shall thereupon with all convenient speed convey and deliver up the person with the other duplicate to the superintendent or other official head of the provincial institution, who shall give his receipt in writing for every person so received by him to the bailiff, and every such person shall be kept in the institution until discharged by due course of law or removed under competent authority. R.S.O. 1937, c. 388, s. 23.

Bailiffs to
give and
take receipts
for persons
in their
charge.

24.—(1) The county or other municipality in which the jail or other place of custody is situate and from which the

Expenses
of removal.

person is removed by the bailiff, shall be liable to pay to the Treasurer of Ontario, on demand, the expenses incurred in the removal and conveyance of the person, together with 60 per cent added thereto.

How borne.

(2) Where a jail is maintained jointly by a city and county, or in the case of a town separated from a county, the county shall be deemed to be the municipality in which the jail is situate, and the city or town shall pay its just proportion of such expenses and additional percentage, and if not mutually agreed upon, the same shall be determined by arbitration as provided by *The Municipal Act*. R.S.O. 1937, c. 388, s. 24.

Rev. Stat.,
c. 243.

Employment
of prisoners
outside jail.

25. The Lieutenant-Governor in Council may direct or authorize the employment beyond the limits of the common jail upon any work or duty, the nature of which is specified in the Order in Council, of any person who is sentenced to be imprisoned with hard labour in the jail under any statute of Ontario or for the breach of a by-law of any municipal corporation or board of commissioners of police. R.S.O. 1937, c. 388, s. 25.

Discipline of
jail to be
observed
during em-
ployment.

R.S.C. 1927,
c. 163.

26. Every such prisoner shall, during such employment, be subject to the rules, regulations and discipline of the jail, and to any regulations made by the Lieutenant-Governor in Council under the *Prisons and Reformatories Act* (Canada) for preventing escapes and preserving discipline. R.S.O. 1937, c. 388, s. 26.

Supervision.

27. No such prisoner shall be so employed, except under the strictest care and supervision of officers appointed to that duty. R.S.O. 1937, c. 388, s. 27.

What to be
deemed part
of jail.

28. Every street, highway or public thoroughfare on which prisoners may pass in going to or returning from their work, and every place where they may be employed under this Act, shall, while so used, be deemed to be a part of the jail for the purposes of this Act. R.S.O. 1937, c. 388, s. 28.

Division
of earnings
of prisoners.

29.—(1) An account shall be kept of the amount earned by the labour of prisoners imprisoned in any common jail, and such amount shall be divided between the Province and the county in proportion to the amount contributed by them respectively towards the care and maintenance of the prisoners.

How and
when made.

(2) The division shall be made by such officer, or other person, and at such time as the Lieutenant-Governor in Council shall direct. R.S.O. 1937, c. 388, s. 29.

30. In the case of a county in which a city or separated town is situate, the share of such earnings which the city or town shall be entitled to receive from the county shall, in case the councils are unable to agree, be determined annually by arbitration under *The Municipal Act*. R.S.O. 1937, c. 388, s. 30. Division of earnings between county and city or town.
Rev. Stat., c. 243.

31.—(1) No jailer, keeper or other officer of any jail, lock-up or industrial farm shall sell, lend, use, or give away, or knowingly permit or suffer any intoxicating liquors within the meaning of *The Liquor Control Act* to be sold, used, lent or given away to any prisoner or to any person committed to an industrial farm, or to be brought into the same, other than as may be prescribed by or given by the direction of a legally qualified medical practitioner. No intoxicating liquors to be given to prisoners by officers;
Rev. Stat., c. 210.

(2) No person shall give, convey or supply to any prisoner confined in any jail or industrial farm, any intoxicating liquor within the meaning of *The Liquor Control Act* otherwise than as authorized by this Act. or by any person.

(3) Every person who contravenes this section shall be guilty of an offence and on summary conviction shall be liable to a penalty of \$100. Penalty.

(4) For a second offence of the like nature by such jailer, keeper, or other officer, he shall also forfeit his office. R.S.O. 1937, c. 388, s. 31. Second offence by officer.

CHAPTER 189

The Judges' Orders Enforcement Act

1.—(1) Where jurisdiction is given to a judge as *persona designata* and where the statute under which he acts does not provide otherwise, his orders shall be entered in the same way as orders made by him in matters pending in the court of which he is a judge and may be enforced in the same way as judgments of the court. Enforcing orders of judge as *persona designata*.

(2) The affidavits used upon an application to a judge as *persona designata* shall be filed with the clerk of the court as upon ordinary applications in a matter pending in the court. Filing of affidavits.

(3) The same fee shall be paid for such filings and upon any order made as in ordinary proceedings in the court. Fees. R.S.O. 1937, c. 123, s. 1, *amended*.

2. Where an application is made to a judge as *persona designata* and where the statute under which he acts does not provide otherwise, he shall have the same jurisdiction as to costs and otherwise as in matters in court under his ordinary jurisdiction. Jurisdiction as to costs, etc. R.S.O. 1937, c. 123, s. 2, *amended*.

3.—(1) An appeal shall lie from any order made by a judge as *persona designata* to the Court of Appeal, Appeal.

(a) when the right of appeal is given by the statute under which the judge acts; or

(b) when no such right of appeal is given, then by leave of the judge making the order or by leave of a judge of the Supreme Court.

(2) The decision of the Court of Appeal shall be final. Decision final. R.S.O. 1937, c. 123, s. 3.

CHAPTER 190

The Judicature Act**1. In this Act,**Interpre-
tation.

- (a) "action" means a civil proceeding commenced by writ or in such other manner as may be prescribed by the rules;
- (b) "cause" includes an action, suit or other original proceeding between a plaintiff and a defendant;
- (c) "county" includes district;
- (d) "county court" includes district court;
- (e) "county town" includes district town;
- (f) "Court of Appeal" means The Court of Appeal for Ontario;
- (g) "defendant" includes a person served with a writ of summons or process, or served with notice of, or entitled to attend a proceeding; R.S.O. 1937, c. 100, s. 1, cls. (a-g).
- (h) "finance committee" means finance committee appointed by the Lieutenant-Governor in Council under this Act; 1938, c. 18, s. 2.
- (i) "High Court" means The High Court of Justice for Ontario;
- (j) "judge" includes a chief justice and an *ex officio* judge;
- (k) "judgment" includes an order;
- (l) "Master of the Supreme Court" includes assistant master;
- (m) "matter" includes every proceeding in the court not in a cause;
- (n) "party" includes a person served with notice of or attending a proceeding, although not named on the record;
- (o) "petitioner" includes a person making an application to the court, either by petition, motion or summons, otherwise than as against any defendant;

- (p) "plaintiff" includes a person asking any relief otherwise than by way of counterclaim as a defendant against any other person by any form of proceeding;
- (q) "pleading" includes a petition or summons, the statement in writing of the claim or demand of a plaintiff, of the defence of a defendant thereto, and of the reply of the plaintiff to a counterclaim of a defendant;
- (r) "proper officer" where that expression is used with respect to a duty to be discharged under this Act or the rules and that duty has been discharged by a particular officer, means that officer, and where that expression is used in respect to a new duty under this Act or the rules, means the officer to whom the duty is assigned by this Act or by the rules, or if it is not assigned to any officer means such officer as shall from time to time be directed to discharge the duty, if it relates to the Court of Appeal by the Chief Justice of Ontario, or if it relates to the High Court by the Chief Justice of the High Court; R.S.O. 1937, c. 100, s. 1, cls. (h-q).
- (s) "rules" means rules of court; R.S.O. 1937, c. 100, s. 1, cl. r, *amended*.
- (t) "Rules Committee" means Rules Committee established under this Act; 1941, c. 24, s. 1.
- (u) "Supreme Court" means Supreme Court of Ontario. R.S.O. 1937, c. 100, s. 1, cl. (s).

CONSTITUTION AND JUDGES OF SUPREME COURT

Jurisdiction
of Supreme
Court.

2. The Supreme Court shall be continued as a superior court of record, having civil and criminal jurisdiction, and it shall have all the jurisdiction, power and authority which on the 31st day of December, 1912, was vested in or might be exercised by the Court of Appeal or by the High Court of Justice or by a divisional court of that court, and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court. R.S.O. 1937, c. 100, s. 2.

Branches.

3. The Supreme Court shall continue to consist of two branches, The Court of Appeal for Ontario and The High Court of Justice for Ontario. R.S.O. 1937, c. 100, s. 3, *amended*.

Court of
Appeal.

4.—(1) The Court of Appeal shall consist of a chief justice who shall be the president thereof and who shall be called the

Chief Justice of Ontario, and nine other judges to be called justices of appeal.

(2) Where the Chief Justice of Ontario is absent from the County of York or where he is for any reason unable or unwilling to act, his powers shall be exercised and his duties performed by the senior justice of appeal. 1949, c. 46, s. 1, *part.* Absence of Chief Justice.

5. The High Court shall consist of a chief justice who shall be the president thereof and who shall be called the Chief Justice of the High Court, and sixteen other judges. 1949, c. 46, s. 1, *part.* High Court. of Justice.

6.—(1) The Chief Justice of Ontario shall have rank and precedence over all the other judges. Rank and precedence.

(2) The Chief Justice of the High Court shall have rank and precedence next after the Chief Justice of Ontario. Idem.

(3) The justices of appeal and the other judges shall have rank and precedence after the Chief Justice of the High Court and among themselves according to seniority of appointment. 1949, c. 46, s. 1, *part.* Idem.

7. Every judge appointed to the Court of Appeal or to the High Court shall be a judge of the Supreme Court and shall be *ex officio* a judge of the branch of which he is not a member, and, except where it is otherwise expressly provided, all the judges of the Supreme Court shall have in all respects equal jurisdiction, power and authority. R.S.O. 1937, c. 100, s. 7. Judges of the Supreme Court.

8.—(1) Every judge, before entering on the duties of his office, shall take and subscribe the following oath: Oath of office.

I do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trust reposed in me as.....
So help me God.

(2) The oath shall be administered to a chief justice before the Lieutenant-Governor in Council, to a justice of appeal by the Chief Justice of Ontario, and to a judge of the High Court by the Chief Justice of the High Court, unless the Lieutenant-Governor in Council in any case otherwise directs, and in that event before such officer or functionary and in such manner as the Lieutenant-Governor in Council may direct. R.S.O. 1937, c. 100, s. 8, *amended.* How oath to be administered.

Giving of judgment by judge who resigns or is appointed to another court.

9.—(1) Where a judge resigns his office or is appointed to any other court, he may at any time within eight weeks after his resignation or appointment give judgment in any cause, action or matter previously tried by or heard before him, as if he had not so resigned or been appointed.

When to take part in judgment.

(2) Where he has heard a cause, action or matter jointly with other judges in the Court of Appeal he may at any time within the period mentioned in subsection 1 take part in the giving of judgment by that court as if he were still a member of it.

Judgment of remaining judges or majority.

(3) Where he does not take part in the giving of judgment or where a judge by whom a cause, action or matter has been heard in the Court of Appeal is absent from illness or any other cause or dies, the remaining judges of the court, or, if there is a difference of opinion, a majority of them may give judgment as if the judge who has so resigned or been appointed or is dead were still a member of the court and taking part in the judgment, and in the case of absence as if the absent judge were present and taking part in the judgment.

Reading judgment of absent judge.

(4) Where a judge who has heard a cause, action or matter in the Court of Appeal is not present when the judgment of the court is delivered, his written judgment may be read by one of the other judges and shall have the same effect as if he were present. R.S.O. 1937, c. 100, s. 9.

SEAL

Seal.

10. There shall be a seal for the Supreme Court to be approved by the Lieutenant-Governor in Council. R.S.O. 1937, c. 100, s. 10.

JURISDICTION AND LAW

Jurisdiction of Court of Appeal.

11.—(1) The Court of Appeal shall exercise that part of the jurisdiction vested in the Supreme Court which, on the 31st day of December, 1912, was vested in the Court of Appeal and in the Divisional Courts of the High Court, and such jurisdiction shall be exercised by the Court of Appeal, and in the name of the Supreme Court.

Jurisdiction of High Court.

(2) Except as provided by subsection 1 all the jurisdiction vested in the Supreme Court shall be exercised by the High Court in the name of the Supreme Court. R.S.O. 1937, c. 100, s. 11.

Jurisdiction of Chief Justice and Justices of appeal.

12.—(1) All jurisdiction, power and authority which on the 31st day of December, 1912, was vested in or exercisable by the Chief Justice of Ontario or by a justice of appeal, shall be vested in and may be exercised by a judge of the

Court of Appeal, and shall be exercised in the name of the Supreme Court.

(2) All jurisdiction, power and authority which on the 31st day of December, 1912, was vested in or exercisable by a judge of the High Court shall be vested in and may be exercised by a judge of the High Court, and shall be exercised in the name of the Supreme Court. R.S.O. 1937, c. 100, s. 12. Jurisdiction of judges of the High Court.

13. Upon the request of the judge or judges for or with whom he is requested to sit or act, or upon the request of the Chief Justice of Ontario or of the Chief Justice of the High Court, any judge of the Supreme Court or any retired judge of that Court may sit and act as a judge of either of the branches of the Supreme Court, or perform any other official or ministerial act for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of the Court of Appeal, and while so sitting and acting, any such judge or retired judge shall have all the power and authority of a judge of the Supreme Court. R.S.O. 1937, c. 100, s. 13. Provisions for absence or vacancy in office of a judge.

14.—(1) Subject to the rules, the courts and the judges thereof, or any commissioner appointed under section 50, may sit and act, at any time and at any place, for the transaction of any part of the business of the courts, or of the judges or commissioner or for the discharge of any duty which by any statute, or otherwise, is required to be discharged. Sittings of courts.

(2) Subject to subsection 1 the Court of Appeal shall sit at Toronto. R.S.O. 1937, c. 100, s. 14. Where Court of Appeal to sit.

ADMINISTRATION OF JUSTICE

15. In every civil cause or matter law and equity shall be administered according to the following rules: Rules of law and equity.

- (a) Where a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any defendant in such cause or matter, or to any relief founded upon a legal right which before the passing of *The Ontario Judicature Act, 1881* could only have been given by a court of equity, the Supreme Court and every judge shall give to the plaintiff such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purposes properly instituted before the passing of that Act. Equitable relief. 44 V., c. 5.

Declaratory judgments and orders.

- (b) No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right, whether any consequential relief is or could be claimed or not.

Equitable defences.

- (c) Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff in such cause or matter, the court and every judge shall give to every equitable estate, right or ground of relief so claimed and to every ground of equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in a suit or proceeding instituted in that court for the same or the like purpose before the passing of *The Ontario Judicature Act, 1881*.

44 V., c. 5.

Relief which may be granted to defendants.

- (d) The court and every judge shall also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff as such defendant has properly claimed by his pleading, and as the court or any judge might have granted in a suit instituted for that purpose by the same defendant against the same plaintiff; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who has been duly served with notice in writing of such claim pursuant to the rules or to any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall henceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

Courts to take notice of equitable rights and duties.

- (e) The court and every judge shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing

incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of *The Ontario Judicature Act, 1881*.

- (f) No cause or proceeding shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, prior to *The Ontario Judicature Act, 1881*, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto; but nothing in this Act shall disable the court from directing a stay of proceedings in any cause or matter pending before it; and any person, whether a party or not to any such cause or matter, who would have been entitled, prior to *The Ontario Judicature Act, 1881*, to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, may apply to the court by motion in a summary way, for a stay of proceedings in such cause or matter either generally, or so far as may be necessary for the purposes of justice; and the court shall thereupon make such order as shall be deemed just. Restraining proceedings.
- (g) Subject to the foregoing provisions for giving effect to equitable rights and other matters of equity and the other express provisions of this Act, the court and every judge shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as the same would have been recognized and given effect to prior to *The Ontario Judicature Act, 1881* by any of the courts then existing and whose jurisdiction is now vested in the Supreme Court. Giving effect to legal claims.
- (h) The court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as it shall deem just, all such remedies as any of the parties may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them in such cause or matter so that, as far as possible, all matters so in controversy between the parties may be completely Multiplicity of proceedings to be avoided.

and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

Sanction of court to sale under mortgage securing debentures.

- (i) (i) In case bonds or debentures are secured by a mortgage or charge by virtue of a trust deed or other instrument and whether or not provision is contained in the trust deed or other instrument creating such mortgage or charge giving to the holders of such bonds or debentures or a majority; or a specified majority of them, power to sanction the sale, transfer or exchange of the mortgaged or charged premises for a consideration other than cash, and in case any action has been brought or is brought for the purpose of enforcing or realizing upon any such mortgage or charge, or for the execution of the trusts in any such trust deed or other instrument with or without other relief, the court may order a meeting or meetings of the holders of such bonds or debentures to be summoned and held in such manner as the court may direct, and if the holders of such bonds or debentures sanction or approve the sale, transfer or exchange of the property so mortgaged or charged for a consideration wholly or in part other than cash, the court may in such action order and approve such sale on such terms in all respects as the court shall think fair and reasonable having regard to the interests of all parties interested in the premises and property so mortgaged or charged, and in such order or by any subsequent order may make provision in such manner, on such terms in all respects as to the court may seem proper, for the transfer to and vesting in the purchaser or his or its assigns of the whole or any part of the premises and property so mortgaged or charged and so sold, and for the payment of the proper costs, charges and expenses and remuneration of any trustee or trustees under such trust deed or other instrument and of any receiver or receiver and manager appointed by the court, and of any committee or other persons representing holders of such bonds or debentures, and for the distribution or other disposition of the proceeds of such sale, and for the protection of any or all persons whose interests are affected by such order, and for all such incidental, consequential and supplemental matters as the court may deem just.
- (ii) The approval of the holders of any such bonds or debentures may be given by resolution passed at a meeting, by the votes of the holders of a majority in principal amount of such bonds or debentures, represented and voting in person or by proxy, and

holding not less than fifty per cent in principal amount, or such lesser amount as the court under all the circumstances may approve, of the issued and outstanding bonds or debentures in question. R.S.O. 1937, c. 100, s. 15.

16.—(1) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made; and any such order may be made either unconditionally, or upon such terms and conditions as the court shall deem just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, the injunction may be granted, whether the person against whom it is sought is or is not in possession under any claim of title or otherwise, or if out of possession does or does not claim a right to do the act sought to be restrained under a colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable. Injunctions and receivers.

(2) An action may be brought in the Supreme Court by or on behalf of the Attorney-General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever which publishes continuously or repeatedly, writings or articles which are obscene, immoral, or otherwise injurious to public morals. R.S.O. 1937, c. 100, s. 16 (1, 2). Mandamus or injunction restraining obscene publications.

(3) An action may be brought in the Supreme Court by or on behalf of the Attorney-General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever containing any writing, article or picture tending to insult, degrade, revile or expose to hatred, contempt, ridicule or mockery His Majesty or any member of the Royal Family. Actions restraining publication of articles or pictures insulting His Majesty.

(4) The court may in addition to making such order require the defendant to enter into a recognizance in such sum and during such term as the court may require to carry out the terms of the order and to refrain from the publication of any writing, article or picture of a like nature. Recognizance.

(5) Upon the making of such order the Attorney-General may cause a copy thereof to be served personally upon any person, and if the person after the service publishes any such writing, article or picture he shall be liable for contempt to the same extent as if he had been a party to the proceedings. R.S.O. 1939, c. 23, s. 1 (1). Service of order.

Against
whom
action may
be brought.

(6) An action under subsection 2 or 3 may be brought against anyone printing, publishing or distributing any publication of the kind mentioned in subsection 2 or 3. 1939, c. 23, s. 1 (2).

Inter-
locutory
injunctions.

(7) In any action brought under subsection 2, 3 or 6 the judge may on such material as he sees fit grant an interlocutory injunction or mandamus. 1939, c. 23, s. 1 (3).

Interpre-
tation.

17.—(1) In this section, “labour dispute” means any dispute or difference between an employer and one or more employees as to matters or things affecting or relating to work done or to be done by the employee or employees or as to the privileges, rights, duties or condition of employment of the employee or employees.

Interim
injunction.

(2) An *ex parte* interim injunction to restrain any person from doing any act in connection with any labour dispute shall not be for a longer period than four days. 1942, c. 34, s. 18 (1).

Damages,
etc.

18. Where the court has jurisdiction to entertain an application for an injunction against a breach of a covenant, contract or agreement or against the commission or continuance of a wrongful act, or for the specific performance of a covenant, contract or agreement, the court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance, and the damages may be ascertained in such manner as the court may direct, or the court may grant such other relief as may be deemed just. R.S.O. 1937, c. 100, s. 17.

Relief
against
penalties,
etc.

19. The court shall have power to relieve against all penalties and forfeitures, and in granting such relief to impose such terms as to costs, expenses, damages, compensation and all other matters as may be deemed just. R.S.O. 1937, c. 100, s. 18.

Jurisdiction
as to
validity of
statutes.

20.—(1) In any action in which the Attorney-General for Canada or the Attorney-General for Ontario is a party plaintiff and the other attorney-general is a party defendant, the court shall have jurisdiction to make a declaration as to the validity in whole or in part of any statute of the Legislature or any statute of the Parliament of Canada which by its terms purports to have force in Ontario, though no further relief be prayed or sought. R.S.O. 1937, c. 100, s. 19 (1), *amended*.

Appeal.

(2) The judgment in any such action shall be subject to appeal as in ordinary cases. R.S.O. 1937, c. 100, s. 19 (2).

21. Where an action is brought in the Supreme Court for a cause of action for which a suit or action has been brought and is pending between the same parties or their representatives in any place or country out of Ontario, the court or a judge may make an order staying all proceedings in the Supreme Court until satisfactory proof is offered to the court or a judge that the suit or action so brought in such other place or country out of Ontario is determined or discontinued. R.S.O. 1937, c. 100, s. 20.

Stay of proceedings if action for same cause is pending out of Ontario.

22. In questions relating to the custody and education of infants and generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. R.S.O. 1937, c. 100, s. 21.

Rules of equity to prevail.

23. Sections 15 to 22 shall be in force and have effect in all courts so far as the matters to which they relate are cognizable by such courts. R.S.O. 1937, c. 100, s. 22.

Sections 15 to 22 to apply to all courts.

APPEALS

24. No order of the High Court or of a judge thereof made with the consent of parties shall be subject to appeal, and no order of the High Court or of a judge thereof as to costs only which by law are left to the discretion of the court shall be subject to appeal on the ground that the discretion was wrongly exercised, or that it was exercised under a misapprehension as to the facts or the law or on any other ground, except by leave of the court or judge making the order. R.S.O. 1937, c. 100, s. 23.

Certain orders not subject to appeal.

25. There shall be no appeal to the Court of Appeal from any interlocutory order whether made in court or chambers, save by leave as provided in the rules. R.S.O. 1937, c. 100, s. 24.

Appeals from interlocutory orders.

26.—(1) Subject to sections 24 and 25 and to the rules regulating the terms and conditions on which appeals may be brought, an appeal shall lie to the Court of Appeal from,

Appeals to Court of Appeal.

- (a) any judgment, order or decision of a judge of the High Court in court, whether at the trial or otherwise;
- (b) any judgment, order or decision of a judge in chambers in regard to a matter of practice or procedure which affects the ultimate rights of any party, and subject to the rules from any other judgment, order or decision of a judge in chambers in regard to a matter of practice or procedure.

Statutory
appeals.

(2) The Court of Appeal shall also have jurisdiction as provided by any Act of the Parliament of Canada or of the Legislature.

New trials.

(3) The Court of Appeal shall also have jurisdiction to hear and determine applications for new trials and applications to set aside verdicts and findings of juries in actions and matters tried or heard in the High Court.

Generality
of s. 11 (1),
not affected.

(4) Nothing in this section shall limit the generality of subsection 1 of section 11. R.S.O. 1937, c. 100, s. 25.

Court may
pronounce
proper
judgment.

27.—(1) The court upon an appeal may give any judgment which ought to have been pronounced and may make such further or other order as may be deemed just.

Power to
draw infer-
ences of
fact and to
give
judgment.

(2) The court shall have power to draw inferences of fact not inconsistent with any finding of the jury which is not set aside, and if satisfied that there are before the court all the materials necessary for finally determining the matters in controversy, or any of them, or for awarding any relief sought, the court may give judgment accordingly, but if the court is of opinion that there are not sufficient materials before it to enable it to give judgment the court may direct the appeal to stand over for further consideration and may direct that such issues or questions of fact be tried and determined and such accounts be taken and such inquiries be made as may be deemed necessary to enable the court on such further consideration finally to dispose of the matters in controversy.

Where
appeal is
against
part only.

(3) The powers conferred by subsections 1 and 2 may be exercised notwithstanding that the appeal is as to part only of the judgment, order or decision, and may be exercised in favour of all or any of the parties, although they may not have appealed. R.S.O. 1937, c. 100, s. 26.

New trial
not to be
granted
in certain
cases.

28.—(1) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to the jury, or by reason of any omission or irregularity in the course of the trial, unless some substantial wrong or miscarriage has been thereby occasioned.

Judgment
as to one
part and
new trial
as to others.

(2) If it appears that a substantial wrong or miscarriage was so occasioned but it affected part only of the matter in controversy or some or one only of the parties, the court may give final judgment as to any part or any party not so affected, and direct a new trial as to the other part only, or only as to the other parties. R.S.O. 1937, c. 100, s. 27.

29. A new trial may be ordered upon any question without interfering with the decision upon any other question. R.S.O. 1937, c. 100, s. 28. New trial may be ordered on any question.

30. Where the jury disagrees or makes no finding on which judgment can be entered, the court may, on the application of the defendant, dismiss the action on the ground that there is no evidence to warrant a judgment for the plaintiff, or that for any other reason he is not entitled to judgment. R.S.O. 1937, c. 100, s. 29. Disagreement of jury.

31. In any cause or matter pending before the Court of Appeal any direction incidental to it not involving the decision of the appeal, may be given by a judge of such court; and a judge of that court may during vacation make any interim order to prevent prejudice to the claim of any of the parties pending an appeal, as he may think fit; but every such order made by the judge shall be subject to appeal to the Court of Appeal. R.S.O. 1937, c. 100, s. 30. Power of judge of Court of Appeal.

EFFECT OF JUDICIAL DECISIONS

32.—(1) If a judge deems a decision previously given to be wrong and of sufficient importance to be considered in a higher court, he may refer the case before him to the Court of Appeal. Decisions may be referred to Court of Appeal.

(2) Where a case is so referred, it shall be set down for hearing, and notice of hearing shall be given in like manner as in the case of an appeal to the Court of Appeal. R.S.O. 1937, c. 100, s. 31. Procedure.

CONSTITUTIONAL QUESTIONS

33.—(1) Where in any action or other proceeding the constitutional validity of any Act or enactment of the Parliament of Canada or of the Legislature is brought in question, the same shall not be adjudged to be invalid until after notice has been given to the Attorney-General for Canada and to the Attorney-General for Ontario. Notice to be given before Act declared invalid.

(2) The notice shall state what Act or part of an Act is in question and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued. Form of notice.

(3) Subject to the rules, the notice shall be served six days before the day named for the argument. Six days notice.

Right of
Attorneys-
General to
be heard.

(4) The Attorney-General for Canada and the Attorney-General for Ontario shall be entitled as of right to be heard either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding. R.S.O. 1937, c. 100, s. 32.

WHERE NO ACTION OR EXTRAORDINARY REMEDY LIES

Proceedings
not to lie.

34. No action and no proceeding by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against the Treasurer of Ontario, his representative or appointee, whether in any such person's public or private capacity, for anything done or omitted or proposed or purported to be done or omitted in connection with the administration or carrying out of *The Succession Duty Act*. 1937 (2nd Sess.), c. 2, s. 2.

Rev. Stat.,
c. 378

INTEREST

Interest
may be
allowed
as hereto-
fore.

35. Interest shall be payable in all cases in which it is now payable by law or in which it has been usual for a jury to allow it. R.S.O. 1937, c. 100, s. 33.

When allow-
able on
debts cer-
tain and
overdue.

36.—(1) On the trial of any issue, or on any assessment of damages, upon any debt or sum certain, payable by virtue of a written instrument at a time certain, interest may be allowed from the time when the debt or sum became payable.

When allow-
able after
demand of
payment.

(2) If such debt or sum is payable otherwise than by virtue of a written instrument at a time certain, interest may be allowed from the time when a demand of payment was made in writing, informing the debtor that interest would be claimed from the date of the demand.

Interest by
way of
damages in
certain
actions.

(3) In actions for the conversion of goods or for trespass *de bonis asportatis*, the jury may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon. R.S.O. 1937, c. 100, s. 34.

Interest on
judgments.

37. Unless otherwise ordered by the court, a verdict or judgment shall bear interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, notwithstanding that the entry of judgment shall have been suspended by any proceeding in the action including an appeal. R.S.O. 1937, c. 100, s. 35.

CERTIFICATES OF LIS PENDENS

38.—(1) The institution of an action or the taking of a proceeding in which any title to or interest in land is brought in question shall not be deemed notice of the action or proceeding to any person not a party to it until, where the land is registered under *The Land Titles Act*, a caution is registered under that Act, or in other cases, until a certificate, signed by the proper officer of the court has been registered in the registry office of the registry division in which the land is situate.

Action, etc.,
not notice
unless
caution or
certificate
registered.
Rev. Stat.,
c. 197.

(2) The certificate may be in the following form:

Form.

I certify that in an action or proceeding in the Supreme Court of Ontario between *A. B.*, of, and *C. D.*, of, some title or interest is called in question in the following land: (*describing it*).

Dated at (*stating place and date*).

(3) Subsection 1 shall not apply to an action or proceeding for foreclosure or sale upon a registered mortgage. R.S.O. 1937, c. 100, s. 36.

Exception.

39.—(1) Where a caution or certificate is registered and the plaintiff or other party at whose instance it was issued does not in good faith prosecute the action or proceeding, a judge of the High Court may at any time make an order vacating the caution or certificate.

Order
vacating
caution or
certificate.

(2) Where a caution or certificate is registered and the plaintiff's claim is not solely to recover land or an estate or interest in land, but to recover money or money's worth, chargeable on or payable out of land, or some estate or interest in it, or for the payment of which he claims that the land or such estate or interest ought to be subjected, or where the plaintiff claims land or some estate or interest in land, and, in the alternative, damages or compensation in money or money's worth, a judge of the High Court may at any time make an order vacating the caution or certificate upon such terms as to giving security or otherwise as may be deemed just.

Where land,
etc., not
claimed.

(3) A judge of the High Court may at any time vacate the registration upon any other ground which may be deemed just.

Upon other
grounds.

(4) On an application under this section, the judge may order any of the parties to the application to pay the costs of any of the other parties to it, or may make any other order with respect to costs, which under all the circumstances may be deemed just.

Costs.

Appeal;
registration.

(5) The order vacating a caution or certificate shall be subject to appeal according to the practice in like cases, and may be registered in the same manner as a judgment affecting land on or after the fourteenth day from the date of the order, unless the order is meanwhile reversed or its registration is postponed or forbidden by an order of a judge of the High Court.

Effect.

(6) Where a caution or certificate is vacated, any person may deal in respect to the land as fully as if the caution or certificate had not been registered, and it shall not be incumbent on any purchaser or mortgagee to inquire as to the allegations in the action or proceeding, and his rights shall not be affected by his being aware of such allegations. R.S.O. 1937, c. 100, s. 37.

COURT OF APPEAL

Hearing of
appeals.

40.—(1) Except where otherwise provided, every appeal to the Court of Appeal shall be heard before not less than three justices of appeal sitting together, and always before an uneven number of justices. R.S.O. 1937, c. 100, s. 38 (1), *amended*.

Divisions.

(2) The Court of Appeal may sit in two divisions in alternate weeks or at the same time.

C.J.O. to
determine.

(3) The justices to sit from time to time and the appeals to be heard shall be determined by the Chief Justice of Ontario. R.S.O. 1937, c. 100, s. 38 (2, 3).

C.J.O. may
assign cer-
tain work.

41.—(1) The Chief Justice of Ontario may assign any justice of appeal not sitting in the Court of Appeal to perform, in Toronto, the work of a High Court judge.

Ad hoc
judges of
Court of
Appeal.

(2) Whenever occasion requires a judge who is not a member of the Court of Appeal may sit in the place of a judge of the Court of Appeal.

When judges
of one
court may
sit in
another.

(3) Subsection 2 shall apply where a vacancy occurs in the Court of Appeal by death or resignation of a judge or otherwise, until his successor is appointed.

Right of
judge who
sits in place
of another
not to be
questioned.

(4) A judge who sits in the place of a judge of the Court of Appeal shall be conclusively deemed to have been entitled and qualified to so sit within the meaning of subsections 2 and 3.

Judge may
give judg-
ment after
ceasing to
be judge of
the Court
of Appeal.

(5) A judge who has sat in the Court of Appeal on the hearing of any appeal, matter or proceeding therein may give judgment notwithstanding that he has ceased to be a judge of that court.

(6) A judge shall not sit on the hearing of an appeal from a judgment or order made by himself. R.S.O. 1937, c. 100, s. 39. Judge not to hear appeal from his own judgment.

42. Neither the Chief Justice of Ontario nor any of the justices of appeal shall, except as provided in section 41, without his consent, be assigned to, or required to perform any duty except as such appertains to him as a member of the Court of Appeal. R.S.O. 1937, c. 100, s. 40. C. J. O. and justices of appeal not to be assigned certain work without consent.

43. The Chief Justice of Ontario, when present, shall preside, and in his absence the senior justice present shall preside. R.S.O. 1937, c. 100, s. 41, *amended*. Presiding judge.

HIGH COURT

44.—(1) Every action and proceeding in the High Court and all business arising out of it, except as herein otherwise expressly provided, shall be heard, determined and disposed of before a judge, and where he sits in court he shall constitute the court. Business to be disposed of by one judge.

(2) Subject to section 32, a judge of the High Court shall decide all questions coming properly before him, and shall not reserve any case, or any point in a case, for the consideration of the Court of Appeal. R.S.O. 1937, c. 100, s. 42 (1, 2). Judge not to reserve questions.

(3) All such arrangements as may be necessary or proper for the holding of any of the courts, or the transaction of business in the High Court, or the arrangement from time to time of judges to hold such courts, or to transact such business, shall be made by the judges of that branch, with power in the Chief Justice of the High Court to make such readjustment or reassignment as may be necessary from time to time. 1946, c. 43, s. 2. Arrangements re holding of courts.

TRIAL SITTINGS

45.—(1) There shall be as many sittings of the High Court in and for every county as are required for the trial of civil cases, matters and issues and for the trial of criminal matters and proceedings. Sittings for trials.

(2) Separate sittings may be held for the trial of civil causes, matters and issues which are to be tried without a jury, and separate sittings for those which are to be tried with a jury, and separate sittings may also be held for the trial of criminal matters and proceedings. Separate sittings may be held.

Sittings may be held concurrently.

(3) Sittings may be held concurrently or separately as may be directed by the judges appointing the days therefor or by the judges presiding at the sittings.

Jury cases to be tried first.

(4) Subject to the rules, where a sittings is held for the trial of civil causes, matters and issues which are to be tried with and for those which are to be tried without a jury, separate lists shall be made and the jury cases shall be first disposed of unless the presiding judge otherwise directs.

Sittings to be held in county town.

(5) The sittings shall be held in the court house of the county town or at such other place in the county town as the presiding judge directs.

Two sittings yearly in each county.

(6) Subject to the rules, at least two sittings shall be held in each year in and for every county, and additional sittings shall be provided when necessary for the due dispatch of business. R.S.O. 1937, c. 100, s. 43.

Who may preside.

46.—(1) Every such sittings shall be presided over by one of the judges of the Supreme Court, or, on the request in writing of a judge of the Supreme Court, by a retired judge of that court, or by a judge of a county court, or by one of His Majesty's counsel learned in the law appointed for Ontario.

Powers of presiding judge.

(2) Such judge or counsel while holding the sittings shall possess and enjoy and may exercise all the powers and authorities of a judge of the High Court, and in civil proceedings may reserve the giving of his decision on questions raised at the trial and afterwards give the same, and such decisions shall have the like force and effect as the decision of a judge of the High Court. R.S.O. 1937, c. 100, s. 44.

Non-arrival of judge.

47. Where the judge whose duty it is to hold any sittings does not arrive in time, or is not able to open court on the day appointed for that purpose, the sheriff may, after six o'clock in the afternoon of that day, by proclamation, adjourn the sittings to an hour on the following day to be named by him, and so from day to day until the judge arrives or until other directions from the judge or from the Chief Justice of the High Court are received. R.S.O. 1937, c. 100, s. 45.

Hours of sittings.

48.—(1) No such sittings shall begin on any day before nine o'clock in the forenoon, nor, except for special reasons, shall it extend beyond seven o'clock in the afternoon, and there shall be an intermission of at least half an hour at or near noon. R.S.O. 1937, c. 100, s. 46 (1); 1948, c. 50, s. 1.

Non-observance of hours.

(2) Failure to observe any of the provisions of subsection 1 shall not render the trial or other proceeding void. R.S.O. 1937, c. 100, s. 46 (2).

49. Non-jury actions to be tried in any county except the County of York may be entered for trial at any sittings of the High Court in such county. R.S.O. 1937, c. 100, s. 47. Entering non-jury actions for trial.

50.—(1) A commission of assize or any other commission, either general or special, may be issued by the Lieutenant-Governor in Council assigning to the person therein named the duty of trying and determining within any place or district named for that purpose by the commission, any cause or matter, or any question or issue of fact or of law or partly of fact and partly of law, in any cause or matter depending in the Supreme Court, or for the exercise of any civil or criminal jurisdiction capable of being exercised by the court. Commissions of assize and other commissions.

(2) A commissioner, when exercising any jurisdiction assigned to him shall be deemed to constitute the court. Commissioner to be a court. R.S.O. 1937, c. 100, s. 48.

ACTIONS ON QUEBEC JUDGMENTS

51. Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service on the defendant or party sued was personal, no defence which might have been set up to the original action may be made to the action on the judgment. R.S.O. 1937, c. 100, s. 49. Action on Quebec judgment where service personal.

52. Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service was not personal and in which no defence was made, any defence which might have been set up to the original action may be made to the action on the judgment. R.S.O. 1937, c. 100, s. 50. Action on Quebec judgment where service not personal.

53.—(1) Where an action is brought on a judgment obtained in the Province of Quebec the costs incurred in obtaining the judgment in that Province shall not be recoverable without the order of a judge directing their allowance. Costs.

(2) Such order shall not be made, unless, in the opinion of the judge, the costs were properly incurred, nor if it would have been a saving of expense and costs to have first instituted proceedings in Ontario on the original claim. R.S.O. 1937, c. 100, s. 51. Conditions under which order may be made.

MANNER AND PLACE OF TRIAL

54. Actions of libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution and false imprisonment shall be tried by a jury unless the parties in person or by their solicitors or counsel waive such trial. R.S.O. 1937, c. 100, s. 52. Certain actions to be tried by a jury.

Certain actions against municipalities, etc., to be tried without a jury and venue to be local.

55. Actions against a municipal corporation or a board of trustees of a police village for damages in respect of injuries sustained by reason of the default of the corporation in keeping in repair a highway or bridge shall be tried by a judge without the intervention of a jury, and the trial shall take place in the county which constitutes the municipality or in which the municipality or police village is situate. R.S.O. 1937, c. 100, s. 53.

Issues of fact to be tried without jury.

56.—(1) Subject to the rules and except where otherwise expressly provided by this Act, all issues of fact shall be tried and all damages shall be assessed by the judge without the intervention of a jury.

Judge may direct trial by jury.

(2) The judge may nevertheless direct that the issues or any of them be tried and the damages assessed by a jury. R.S.O. 1937, c. 100, s. 54.

Jury notice.

57.—(1) Subject to the rules, if a party desires that the issues of fact shall be tried or the damages assessed by a jury he may, at any stage of the proceedings, but not later than the fourth day after the close of the pleadings or if notice of trial or assessment is served before that time, within two days after service of such notice or within such other time as may be allowed by a judge, file and serve on the opposite party a notice in writing requiring that the issues be tried or the damages assessed by a jury, and if such notice is given, subject to subsection 3, they shall be tried or assessed accordingly.

Copy of notice to be annexed to record.

(2) A copy of the notice shall be attached to the certified copy of the pleadings prepared for use at the trial.

Jury may be dispensed with.

(3) Notwithstanding the giving of the notice the issues of fact may be tried or the damages assessed without the intervention of a jury if the judge presiding at the sittings so directs or if it is so ordered by a judge.

Subsection 1 not to apply to certain causes, etc., 36 V., c. 8.

(4) Subsection 1 shall not apply to causes, matters or issues over the subject of which before *The Administration of Justice Act of 1873*, the Court of Chancery had exclusive jurisdiction. R.S.O. 1937, c. 100, s. 55.

Effect of agreement, etc., as to place of trial.

58.—(1) Subject to subsection 2, no proviso, condition, stipulation, agreement or statement which provides for the place of trial of any action, matter or other proceeding shall be of any force or effect.

Motion by defendants to change venue.

(2) Subsection 1 shall not apply or be available unless and until the defendant moves to change the place of trial. R.S.O. 1937, c. 100, s. 56.

59.—(1) Where an order is made changing the place of trial from one county to another on the ground that a fair trial cannot be had in the first-mentioned county, the first-mentioned county shall pay to the county in which the trial is held all additional expenses which the last-mentioned county incurs by reason of the change of venue.

Change of venue, payment of additional expense.

(2) Where an order is made changing the place of trial from a provisional judicial district to a county on the ground that a fair trial cannot be had in the district, the county shall be repaid all additional expenses which it incurs by reason of the change of venue, out of the Consolidated Revenue Fund, and where an order is made changing the place of trial from a county to a provisional judicial district on the ground that a fair trial cannot be had in the county all additional expenses incurred by reason of the change of venue shall be repaid to the Treasurer of Ontario by the county.

Idem.

(3) Any amount payable by one county to another or by a county to the Treasurer of Ontario under this section shall be a debt recoverable by the county or the Treasurer of Ontario, as the case may be, by action in any court of competent jurisdiction. 1941, c. 24, s. 2.

Recovery of expenses.

JURY TRIALS

60.—(1) It shall be sufficient if ten of the jurors agree, and a verdict rendered or question answered by ten jurors shall have the same effect as a verdict or answer given by twelve jurors.

Agreement of ten jurors to be sufficient.

(2) This section shall apply to special juries.

Special juries.

(3) Where more questions than one are submitted, it shall not be necessary that the same ten jurors shall agree to every answer. R.S.O. 1937, c. 100, s. 57.

Not necessary for same ten jurors to agree to all answers.

61. If at the trial of an action or issue or assessment of damages a juror dies or becomes incapacitated from any cause from continuing to sit or act on the jury, or if it is discovered that a juror has an interest in the result of the proceeding, or is a relative within the degree of first cousin of any of the parties, the judge may discharge such juror and may direct that the trial or assessment shall proceed on such terms as he deems just with eleven jurors, and in such case ten jurors may give the verdict or answer the questions submitted to the jury. R.S.O. 1937, c. 100, s. 58.

Death or illness of juror or discovery of interest during trial.

62.—(1) In the absence of a direction to the contrary of the judge, a jury may give a general or special verdict, but

General or special verdicts.

shall give a special verdict if he so directs and shall not give a general verdict if directed by him not to do so.

Libel actions. (2) This section shall not apply to actions of libel. R.S.O. 1937, c. 100, s. 59.

Answers to questions.

63.—(1) Upon a trial by jury, except in an action for libel, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by him; and the jury shall answer such questions, and shall not give any verdict.

Judgment.

(2) Judgment may be directed to be entered on the answers to such questions. R.S.O. 1937, c. 100, s. 60.

Malicious prosecution actions.

64. In actions for malicious prosecution, the judge shall decide all questions both of law and fact necessary for determining whether or not there was reasonable and probable cause for the prosecution. R.S.O. 1937, c. 100, s. 61.

QUASHING CONVICTIONS, ETC.

Motion substituted for *certiorari*, etc.

65.—(1) Where it is desired to move to quash a conviction, order, warrant or inquisition, the proceeding shall be by motion in the first instance instead of by *certiorari*, rule or order *nisi*.

Service of notice of motion.

(2) Notice of the motion shall be served at least six days before the return day thereof upon the magistrate making the conviction or order, or issuing the warrant, or the coroner making the inquisition, and also upon the prosecutor or informant, if any, and upon the clerk of the peace if the proceedings have been returned to his office, and the notice shall specify the objections intended to be raised.

Endorsement on notice of motion.

(3) Upon the notice of motion shall be endorsed a copy of subsection 4 and a notice in the following form, addressed to the magistrate, coroner, or clerk of the peace, as the case may be:

Form.

You are hereby required forthwith after service hereof to return to the office of the Registrar of the Supreme Court at Osgoode Hall, Toronto, the conviction (*or as the case may be*) herein referred to, together with the information and evidence, if any, and all things touching the matter, as fully and entirely as they remain in your custody, together with this notice.

Dated

To A. B.

Magistrate (*or as the case may be*).

C. D.,

Solicitor for the Applicant.

(4) Upon receiving the notice so endorsed, the magistrate, coroner or clerk of the peace shall forthwith return to the office of the Registrar of the Supreme Court at Osgoode Hall, Toronto, the conviction, order, warrant or inquisition, and the information and evidence, if any, and all things touching the matter, and the notice served upon him with a certificate endorsed upon it in the following form:

Pursuant to the within notice I herewith return to this Honourable Court the following papers and documents: Form.

1. The conviction (*or as the case may be*);
2. The information and the warrant issued thereon;
3. The evidence taken at the hearing;
4. (*Any other papers or documents touching the matter*).

And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody or power relating to the matter set forth in this notice of motion.

(5) The certificate shall have the same effect as a return to a writ of *certiorari* or to an order under the rules. Effect of certificate.

(6) The notice shall be returnable before a judge of the High Court sitting in chambers. Where notices returnable.

(7) The motion shall not be entertained, Limitations.

(a) unless the return day thereof is within six months after the conviction, order, warrant or inquisition; and

(b) the applicant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of \$100 before a magistrate of the county within which the conviction, order or inquisition was made or the warrant was issued, or before a judge of the county court of that county or before a judge of the High Court, conditioned that the applicant will prosecute the application at his own costs and charges without any wilful or affected delay and that he will pay to the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges to be taxed according to the course of the court in case the conviction, order or other proceeding is affirmed, or has paid into court the like sum as security that he will do so.

(8) The recognizance with an affidavit of its due execution shall be filed in the office of the Registrar of the Supreme Court. Recognizance to be filed.

(9) The judge shall have all the powers of the court in the like matters and may order the production of such papers and documents as he may deem necessary. Powers of judge.

No appeal
without
leave.

(10) No appeal from the order of the judge shall lie unless leave is granted by a judge of the High Court. R.S.O. 1937, c. 100, s. 62.

Review of
proceedings
on motion
to quash
conviction.

66. Upon a motion to quash a conviction it shall be the duty of the judge to examine and consider the proceedings returned to the court and if such proceedings show that the person accused has been convicted of any offence known to the law and that there is any evidence to sustain the conviction, the conviction shall be affirmed, but otherwise the conviction shall be quashed, provided that if the evidence returned shows that the accused is guilty of an offence against the law, or that the conviction, though irregular, ought to be amended or drawn so as to duly describe the offence, the conviction shall be affirmed or amended as justice may require. R.S.O. 1937, c. 100, s. 63.

REFERENCES TO REFEREES

Reference
for inquiry
and report.

67.—(1) Subject to the rules and to any right to have particular cases tried by a jury, a judge of the High Court may refer any question arising in an action for inquiry and report either to an official referee or to a special referee agreed upon by the parties.

Where
Crown
interested.

(2) Subsection 1 shall not, unless with the consent of the Crown, authorize the reference to an official referee of an action to which the Crown is a party or of any question or issue therein. R.S.O. 1937, c. 100, s. 64.

Power to
refer in
certain
cases.

68. In an action,

- (a) if all the parties interested who are not under disability consent, and where there are parties under disability the judge is of opinion that the reference should be made and the other parties interested consent; or
- (b) where a prolonged examination of documents or a scientific or local investigation is required which cannot, in the opinion of a court or a judge conveniently be made before a jury or conducted by the court directly; or
- (c) where the question in dispute consists wholly or partly of matters of account,

a judge of the High Court may at any time refer the whole action or any question or issue of fact arising therein or question of account either to an official referee or to a special referee agreed upon by the parties. R.S.O. 1937, c. 100, s. 65.

69.—(1) If it appears in any action that a material question to be determined is the true definition of a boundary line, the question may be referred to a special referee, who shall be an Ontario land surveyor. Reference of boundary line question to surveyor.

(2) The referee shall, by a proper survey as directed by *The Surveys Act*, and upon hearing the evidence adduced by the parties and their counsel, if any, define upon the ground by such posts and monuments as he deems sufficient, the true boundary or division line so in dispute. Proceedings. Rev. Stat., c. 381.

(3) The referee shall make a report to the court and shall therein set forth his mode of procedure and what he has done in the premises, and also such further or other facts and circumstances as may be necessary to enable the court finally to determine the question and how the costs should be borne. R.S.O. 1937, c. 100, s. 66. Report.

70.—(1) In the case of a reference to a special referee he shall be deemed to be an officer of the Court. Special referee, status;

(2) The remuneration to be paid to a special referee may be determined by a judge of the High Court. remuneration;

(3) The remuneration, fees, charges and disbursements payable to an official referee, and, in the absence of any special direction, to a special referee shall be the same as are payable to a local master. scale of remuneration;

(4) Where the judge at the trial instead of trying an action refers the whole action under section 68 to an official referee who is a local registrar or deputy registrar, a local master or other officer of the court, paid wholly or partly by salary, no fees, either in law stamps or otherwise, shall be charged by the referee. R.S.O. 1937, c. 100, s. 67. where no fees payable.

71. The referee shall make his findings and embody his conclusions in the form of a report, and his report shall be subject to all the incidents of a report of a master on a reference as regards filing, confirmation, appealing therefrom, motions thereupon and otherwise, including appeals to the Court of Appeal. R.S.O. 1937, c. 100, s. 68. Referee's report.

72. The evidence of witnesses examined upon the reference and the exhibits shall forthwith after the making of the report be transmitted by the referee to the proper officer of the court. R.S.O. 1937, c. 100, s. 69. Transmission of evidence and exhibits.

SURETY BONDS

Interpre-
tation.

73.—(1) In this section, “surety company” means an incorporated company empowered to give bonds by way of indemnity.

Bonds of
company
may be
taken as
security.

(2) The Lieutenant-Governor in Council may direct that the bond of any surety company named in the Order in Council may be given as security in all cases where security is ordered to be given by any court or by any judge or officer of any court and in all cases where security for the cost of an appeal or for the prosecution of the appeal is required by any law, rule or practice.

Order in
Council to
be published
and tabled.

(3) Every Order in Council made under subsection 2 shall be published forthwith in *The Ontario Gazette* and shall be laid before the Assembly within fifteen days after the making thereof if the Assembly is then in session, and if it is not in session, within fifteen days after the opening of the next session.

Other surety
or affidavit
of justifi-
cation not
required.

(4) The bond of any surety company named in the Order in Council shall be sufficient without any other surety joining in the bond, and an affidavit of justification shall not be necessary.

Disallow-
ance of
bond on
motion.

(5) Notwithstanding anything in this section, any judge or any officer having jurisdiction in the matter may in his discretion disallow any such bond on a motion to disallow it, and upon any evidence which may be deemed sufficient. R.S.O. 1937, c. 100, s. 70.

PHYSICAL EXAMINATION OF PARTIES

Where
examination
may be
ordered.

74.—(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of the damages or compensation, may order that the person in respect of whose injury damages or compensation are sought shall submit himself to a physical examination by a duly qualified medical practitioner or by more than one duly qualified medical practitioners, but no medical practitioner shall be appointed to make the examination who is a witness on either side.

Further
examinations.

(2) The court, judge or other person may order the second examination or further examinations upon such terms as to costs as may be deemed proper.

(3) Every such medical practitioner shall be selected by the court, judge or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs. Medical practitioner to be selected by judge and may be a witness. R.S.O. 1937, c. 100, s. 71.

TENDER OF AMENDS IN TORT ACTIONS

75. A person who has committed a wrong giving a cause of action for the recovery of damages to the person wronged may at any time before action tender amends, and the tender shall have the same effect as a tender in an action for the recovery of a debt. Tender of amends in tort cases. R.S.O. 1937, c. 100, s. 72.

VESTING ORDERS

76. Where the court has authority to direct the sale of any real or personal property or to order the execution of a deed, conveyance, transfer or assignment of any real or personal property, the court may by order vest the property in such person and in such manner and for such estates as would be done by any such deed, conveyance, assignment or transfer if executed; and the order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise, for the same estate or interest, to the person in whom the property is so ordered to be vested, or in the case of a chose in action, as if it had been actually assigned to the last-mentioned person. Vesting orders, effect of. R.S.O. 1937, c. 100, s. 73.

JUDGMENTS FOR ALIMONY

77.—(1) An order or judgment for alimony may be registered in any registry office in Ontario, and the registration shall, so long as the order or judgment remains in force, bind the estate and interest which the defendant has in any land in the registry division in which the registration is made, and operate thereon in the same manner and with the same effect as the registration of a charge by the defendant of a life annuity on his land. Judgments for alimony may be registered.

(2) The order or judgment may also, on the application of the plaintiff, be registered as a charge against any land of the defendant registered under *The Land Titles Act*. Idem.

Rev. Stat., c. 197.

(3) The court may direct a sale of the land upon a summary application in the alimony action upon notice to all persons interested in the land. Sale of land. R.S.O. 1937, c. 100, s. 74.

COSTS

Determina-
tion of costs.

78.—(1) Subject to the express provisions of any statute, the costs of and incidental to all proceedings authorized to be taken in court or before a judge shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent the costs shall be paid.

Rights of
trustees, etc.,
preserved.

(2) Nothing herein shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund.

Where costs
to follow
the event.

(3) Where an action or issue is tried by a jury, the costs shall follow the event, unless the judge before whom the action or issue is tried in his discretion otherwise orders.

In proceed-
ings before
judicial
officers.

(4) Costs of proceedings before judicial officers, unless otherwise disposed of, shall be in their discretion subject to appeal. R.S.O. 1937, c. 100, s. 75.

PROCEDURE ON APPEALS

Practice and
procedure
on appeals.

Rev. Stat.,
c. 67.

R.S.C. 1927,
c. 36.

79. Subject as to appeals under *The Controverted Elections Act* to that Act, and as to appeals and applications for new trials under the *Criminal Code* (Canada) to that Act, the practice and procedure upon appeals to the Court of Appeal shall be that provided by the rules. R.S.O. 1937, c. 100, s. 76.

EXCLUSION OF PUBLIC

Excluding
public from
court.

80. When the judge presiding at the hearing or trial of any cause or matter deems it to be in the interest of public decency and morals, he may order that the public shall be excluded from the court. 1939, c. 23, s. 2.

OFFICES AND OFFICERS

Officers of
Supreme
Court.

81.—(1) There shall be such officers of the Supreme Court as may be deemed necessary by the Lieutenant-Governor in Council for the due dispatch of the business of the court, and such officers, subject to section 98 as to special examiners, shall be appointed by the Lieutenant-Governor in Council.

Duties.

(2) The duties of the officers shall be regulated by the rules and by the terms of any Order in Council governing such officers.

(3) Where under any statute, rule or order, or in any action or proceeding, anything is directed to be done by the Master of the Supreme Court, any assistant master shall have, and shall be deemed to have always had, power to act as fully and effectually as the Master of the Supreme Court. R.S.O. 1937, c. 100, s. 77.

82.—(1) Every officer shall, before entering upon the duties of his office, take and subscribe the following oath:

I, *A. B.*, of solemnly swear that I will according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfill the duties of the office of without favour or affection, prejudice or partiality to any person. So help me God.

Oath of officers.

Form.

(2) The oath shall be administered by a judge in court. R.S.O. 1937, c. 100, s. 78 (1, 2).

Oath to be administered by a judge.

(3) Where it is not convenient for a person appointed to an office to attend at Toronto to take the oath, it may be taken before the judge of the county court of the county in which the officer resides, and in every such case the judge shall forthwith transmit the oath to and it shall be filed in the office of the Registrar of the Supreme Court at Osgoode Hall, Toronto. R.S.O. 1937, c. 100, s. 78 (3, 4) *amended*.

Exception.

83. With the approval of the Lieutenant-Governor in Council every local officer of the Supreme Court, county court clerk, and surrogate registrar, may, by writing under his hand and seal of office, appoint a deputy who may perform all the duties required to be performed by the officer making the appointment. R.S.O. 1937, c. 100, s. 79.

Appointment of deputies by local registrars, etc.

84.—(1) Except where in this Act it is otherwise expressly provided, an officer who is paid by salary shall not take for his own benefit, directly or indirectly, any fee or emolument except the salary to which he is entitled, and the fees payable in respect of proceedings in his office shall be payable to the Crown.

Officers paid by salary not to take fees.

(2) Subsection 1 shall not apply to the fees of,

Exceptions.

(a) a local registrar on an examination had before him as a special examiner or on a reference made to him as an official referee;

(b) a stenographic reporter for copies of shorthand notes of evidence, who shall be entitled to take the fees prescribed by Order in Council. R.S.O. 1937, c. 100, s. 80.

Return of
fees.

85.—(1) Every officer paid wholly or partly by fees, whether commuted or not, shall on or before the 15th day of January in every year, transmit to the Inspector of Legal Offices a just, true and faithful account, verified by his oath, of the amount of fees paid or payable to him in cash or in law stamps, in respect of his office during the next preceding calendar year, and such other particulars with reference to the business of his office as the Inspector may require.

Form of
return.

(2) The Lieutenant-Governor in Council or the minister having charge of the matter may require the return to state any particulars, or to be made in any form which may be deemed proper, and the return shall be made accordingly. R.S.O. 1937, c. 100, s. 81.

WHERE OFFICES TO BE KEPT

Certain
officers
to keep
their offices
at Osgoode
Hall.

86. The officers in Toronto save the Official Guardian, special examiners, stenographic reporters, and any official referee other than one holding that office *ex officio*, shall keep their offices at Osgoode Hall, in the City of Toronto. R.S.O. 1937, c. 100, s. 82.

Local master
to keep office
in county
town.

87. Unless otherwise directed by the Lieutenant-Governor in Council every local master shall keep his office in the county town of the county for which he is appointed. R.S.O. 1937, c. 100, s. 83.

Certain
offices to be
kept at
court house.

88. Every local registrar, and every deputy registrar shall, if proper accommodation is afforded to him there, keep his office in the court house of the county for which he is appointed, and until he can obtain such accommodation he shall keep his office in some convenient place in the county town. R.S.O. 1937, c. 100, s. 84 (1).

OFFICE HOURS

Office hours.

89. Except on holidays and subject to the rules, the offices of the local registrars and deputy registrars and the offices of the Supreme Court at Osgoode Hall, shall be kept open from ten o'clock in the forenoon until four o'clock in the afternoon, except on Saturdays, when they shall be kept open until one o'clock in the afternoon. R.S.O. 1937, c. 100, s. 85.

SECURITY FROM OFFICERS

Officers to
give security,
if required.

90.—(1) Every officer of the Supreme Court, if so required by the Lieutenant-Governor in Council, shall give security to His Majesty for the due performance of the duties of his office in such sum as the Lieutenant-Governor in Council may direct.

(2) The neglect to give such security shall render the appointment of the officer void, but the forfeiture of office shall not affect any act done by him while he continues to act. R.S.O. 1937, c. 100, s. 86.

Consequences of neglecting to do so.

SEALS

91.—(1) In the offices of the local registrars and deputy registrars such seals shall be used as the Lieutenant-Governor in Council shall from time to time direct, and the same shall be impressed on every writ and other document issued out of such office, and every such writ and document and every exemplification and copy thereof purporting to be sealed with such seal shall be received in evidence in all courts without further proof thereof.

Seals of local registrars and deputy registrars.

(2) Until other seals are authorized by the Lieutenant-Governor in Council, the seals in use shall continue to be used. R.S.O. 1937, c. 100, s. 87.

Seals to be used.

OFFICIAL REFEREES

92.—(1) Judges of county courts, the Master of the Supreme Court, registrars, local masters, local registrars, and deputy registrars shall be official referees for the trial of such questions as may be directed to be tried by an official referee.

Official referees.

(2) Where the business requires additional official referees, the Lieutenant-Governor in Council may appoint them.

Additional referees.

(3) Subject to subsection 4 of section 70 in the case of officers who are paid by salary, the fees on a reference or trial shall be paid in law stamps, but other referees shall be paid in money. R.S.O. 1937, c. 100, s. 88.

Fees of referees.

LOCAL MASTERS

93. Unless his appointment otherwise provides, no person who is appointed a local master shall engage in the practice of law or act as a notary public or conveyancer. 1948, c. 50, s. 2, *part.*

Local masters not to practice law, etc., saving.

94. Where in any county the office of local master is vacant or the local master is absent or ill, any judge of any county court in the county court district may act *pro tempore* as the local master. 1948, c. 50, s. 2, *part.*

Vacancies, etc.

LOCAL REGISTRARS, EX OFFICIO

Clerks of
district
courts to
be local
registrars.

95. Unless another person is appointed, the clerk of the district court shall be *ex officio* local registrar for his district. R.S.O. 1937, c. 100, s. 92.

STENOGRAPHIC REPORTERS

Steno-
graphic
reporters.

96.—(1) The stenographic reporters shall be officers of the court to which they are appointed, and shall perform such other duties as may be assigned to them by the Lieutenant-Governor in Council or by the rules.

Reporter's
oath.

(2) Every such reporter shall take and subscribe the following oath before a judge of the court to which he is appointed, and the oath shall be filed with the proper officer of that court:

Form.

I, (A. B.), solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings in each case in which I act as stenographic reporter. So help me God.

R.S.O. 1937, c. 100, s. 93.

Reporters
for county
and surro-
gate courts.

97. The Lieutenant-Governor in Council may appoint a stenographic reporter for any county court or surrogate court and section 96 shall apply to a stenographic reporter so appointed. R.S.O. 1937, c. 100, s. 94.

SPECIAL EXAMINERS

Ex officio
special
examiners.

98.—(1) Every local registrar, deputy registrar, and clerk of the county court shall be *ex officio* a special examiner for the county for which he is appointed.

Appoint-
ment of
special
examiners.

(2) The judges of the Supreme Court may appoint special examiners for the purpose of taking evidence of parties and witnesses, and a commission under the seal of the court shall be issued to a special examiner so appointed.

Number in
Toronto.

(3) There shall be four special examiners in Toronto.

Examina-
tions to
be taken
in presence
of special
examiner.

(4) Where an examination is taken by a stenographer or other person who is not a special examiner, it shall be taken in the presence of the special examiner.

Examina-
tions, not to
be solicited.

(5) A special examiner shall not solicit or make request from any suitor, solicitor, or other person, or offer any inducement to have a special examination taken before him, nor shall any one do so on his behalf with his knowledge or assent, on pain of forfeiture of office.

(6) Where it appears to the Lieutenant-Governor in Council that a local registrar, a deputy registrar, or a clerk of a county court, elsewhere than in Toronto, is infirm or ill, or is otherwise unable or unfit to act personally as special examiner, or if he is absent on leave, the Lieutenant-Governor in Council may appoint the stenographic reporter for the county court, or some other person to act temporarily or otherwise as such special examiner in his stead. Appointment of special examiners, *pro tem.*

(7) In case of the absence on leave or illness of any other special examiner he may, with the approval of the Chief Justice of Ontario, appoint a deputy to act for him during such absence or illness. Appointment of deputy by special examiner. R.S.O. 1937, c. 100, s. 95.

COMMUTATION OF FEES

99.—(1) The Lieutenant-Governor in Council may commute the fees payable to any officer entitled to take fees to his own use for a fixed annual sum, not exceeding the average income derived from such fees during the next preceding five years. Commutation of fees of certain officers.

(2) An annual sum so fixed and any Order in Council for payment of any such annual sum may be rescinded, and the amount may be increased or diminished, but in no case shall it exceed the average income or fees, as the case may be, during the next preceding five years. Amount of commutation may be changed. R.S.O. 1937, c. 100, s. 96.

100.—(1) Every Order in Council determining any commutation allowance under this Act shall be laid before the Assembly forthwith, if the Assembly is then in session, and if the Assembly is not then in session, within the first fifteen days after the opening of the next session. Order in Council as to commutations to be laid before Assembly.

(2) If the Assembly at such session, or if the session does not continue for three weeks after the Order in Council is laid before the Assembly, then at the next ensuing session, disapproves by resolution of such Order in Council, either wholly or so far as relates to any person named in it, the Order in Council, so far as so disapproved, shall have no effect from the time of the passing of the resolution. Disapproval by Assembly. R.S.O. 1937, c. 100, s. 97.

INSPECTOR OF LEGAL OFFICES

101. The Lieutenant-Governor in Council may appoint an officer to be called The Inspector of Legal Offices, to inspect the offices of the Supreme Court, of local courts, of Crown attorneys, and such other offices connected with the administration of justice as the Lieutenant-Governor in Council may direct. Inspector of Legal Offices. R.S.O. 1937, c. 100, s. 98.

Duties of
Inspector.

102.—(1) In addition to any other duties assigned to him by any Act of the Legislature or which may be assigned to him by the Lieutenant-Governor in Council, the Inspector shall,

- (a) make a personal inspection of the offices mentioned in section 101 and of the books and court papers belonging to them;
- (b) see that proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times and in proper form and order, and that the court papers and documents are properly classified and preserved;
- (c) ascertain that the duties of the officers are duly and efficiently performed;
- (d) see that proper costs and charges only are allowed or exacted;
- (e) ascertain whether uniformity of practice prevails in the offices; and
- (f) report upon all such matters to the Lieutenant-Governor.

Inquiries by
Inspector.

(2) Where the Inspector has occasion to inquire into the conduct of any officer in relation to his official duties or acts, he may require the officer or any other person to give evidence before him on oath, and for that purpose he shall have the same power to summon the officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence, as any court has in civil cases.

Books, etc.,
to be pro-
duced for
inspection.

(3) The officers shall, when and as often as required by the Inspector, produce for examination and inspection all books and documents which are required to be kept by them, and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector shall require. R.S.O. 1937, c. 100, s. 99.

OFFICIAL GUARDIAN

Qualification
of Official
Guardian.

103.—(1) No person shall be appointed Official Guardian unless he is a barrister and solicitor of Ontario of not less than ten years standing.

Duties.

(2) The Official Guardian shall be the guardian *ad litem* of infants and shall perform such other duties as may be assigned to him by the rules. R.S.O. 1937, c. 100, s. 100 (1, 2).

(3) The same costs as are payable to counsel and solicitors shall be payable to the Official Guardian, but all costs paid to him shall be entered in the books of account of the Official Guardian or may be paid into court to the credit of an account to be entitled "Account of the Official Guardian". 1948, c. 50, s. 3.

(4) Where an estate is small and the amount at the credit of the Account of the Official Guardian is adequate to pay his salary and the disbursements of his office, the court may direct that no costs shall be paid to him out of the estate. R.S.O. 1937, c. 100, s. 100 (4).

(5) There shall be paid to the Official Guardian for all business done and all costs in respect of it over and above all disbursements, a fixed annual salary of such sum as, in view of the amount of the business done or to be done by him and the sum at the credit of the account, the finance committee deems reasonable and the Lieutenant-Governor in Council approves. R.S.O. 1937, c. 100, s. 100 (5); 1938, c. 18, s. 4 (1).

(6) The salary and disbursements shall be paid monthly out of such moneys as may be appropriated by the Legislature for that purpose and the Lieutenant-Governor in Council may provide for the payment out of the moneys at the credit of the account into the Consolidated Revenue Fund of amounts equal to such salary and disbursements. 1938, c. 18, s. 4 (2).

(7) Out of the surplus at the credit of the account shall be transferred to the Suitors Fee Fund Account such amount as the finance committee may direct. R.S.O. 1937, c. 100, s. 100 (6); 1938, c. 18, s. 4 (3).

(8) If in any year the amount at the credit of the account is insufficient to pay the salary and disbursements the deficiency shall be paid out of such reserve funds as the finance committee may direct.

(9) Subject to the approval of the Lieutenant-Governor in Council, the Official Guardian may appoint a deputy to act for him when he may be absent from Toronto, or ill, and such deputy shall have all the powers and shall perform all the duties of the Official Guardian during any such absence or illness.

(10) No person shall be appointed as such deputy unless he is a barrister and solicitor of Ontario of not less than ten years standing. R.S.O. 1937, c. 100, s. 100 (7-9).

Agents.

(11) The Official Guardian may retain solicitors out of Toronto as agents for the purpose of any proceeding being carried on out of Toronto, and a solicitor so retained shall be entitled to the same costs for the work actually done by him as the Official Guardian would have been entitled to if the work had been done by him, and such costs shall be paid to the Official Guardian and the agent's fees and disbursements shall be paid by the Official Guardian and shall be deemed a disbursement of the Official Guardian.

Audit.

(12) The auditor of the Official Guardian appointed by the Lieutenant-Governor in Council, shall once in every six months transmit to the Provincial Secretary a statement certified by him to be a true statement of the accounts and records of the Official Guardian. 1948, c. 50, s. 3.

Official
Guardian
not to
practise law,
etc.

(13) If the Lieutenant-Governor in Council so directs, the Official Guardian shall not directly or indirectly practise the profession of the law as counsel or solicitor or act as a notary public or conveyancer or do any matter of conveying or prepare any paper or document to be used in any court of Ontario except in the discharge of his duties as Official Guardian or of a duty which may be assigned to him under this Act.

Penalty.

(14) For every contravention of subsection 13 the Official Guardian shall incur a penalty of \$400.

Official
Guardian
not to give
security
for costs.

(15) Unless otherwise ordered by the court or a judge the Official Guardian shall not be required to give security for the costs of any proceeding. R.S.O. 1937, c. 100, s. 100 (12-14).

New Official
Guardian.

(16) When a new Official Guardian is appointed he shall *ipso facto* become and be by virtue of his appointment guardian *ad litem* of all infants in the place and stead of his predecessor with the same rights, duties and powers, and the latter or his executors or administrators shall forthwith deliver to the new Official Guardian all letters, papers, documents and books in his or their possession or power relating to matters in which such predecessor acted as official or other guardian *ad litem* of infants, and the new Official Guardian shall forthwith notify all persons concerned of his appointment. R.S.O. 1937, c. 100, s. 100 (16).

ACCOUNTANT

Accountant
to be a
corporation
sole.

104.—(1) The Accountant of the Supreme Court shall be a corporation sole by the name of The Accountant of the Supreme Court of Ontario, and as such corporation sole shall have perpetual succession and may sue and be sued and may plead and be impleaded in any of His Majesty's courts.

(2) All money, mortgages, stocks, securities and property now vested in the Accountant, as such corporation sole, shall continue to be so vested in him, and all money in court and all securities in which money paid into court is invested shall be vested in him as such corporation sole, subject to this Act. Money, mortgages, etc., to be vested in Accountant.

(3) Where there is a vacancy in the office of Accountant, such officer or person as may be directed by the rules to perform the duties of the officer shall be deemed to be and shall have all the powers of the Accountant. R.S.O. 1937, c. 100, s. 101 (1-3). Where there is no Accountant.

(4) The expenses of the Accountant's office, including all salaries, shall be payable out of such moneys as may be appropriated by the Legislature, and the Lieutenant-Governor in Council may provide for payment out of the income from the funds in court into the Consolidated Revenue Fund of amounts equal to such expenses, and such amounts shall be the first charge on the income from the funds in court. 1938, c. 18, s. 5. Expenses of Accountant's office.

INVESTMENT OF COURT FUNDS

105.—(1) There shall be a committee, known as the finance committee, which shall be composed of three persons who shall be appointed by and hold office during the pleasure of the Lieutenant-Governor in Council, and notwithstanding this or any other Act the finance committee shall have the control and management of the money in court and the securities in which it is invested and the investment of such money. R.S.O. 1937, c. 100, s. 102 (1); 1938, c. 18, s. 6 (1). Finance committee.

(2) The finance committee may provide for the payment of interest upon any money paid into court and may fix the rate of interest so paid. 1938, c. 18, s. 6 (2). Interest.

(3) The finance committee may establish such reserve funds as it may deem expedient in the management of the money in court. R.S.O. 1937, c. 100, s. 102 (2). Reserve funds.

(4) Money paid into court shall be invested in the name of the Accountant of the Supreme Court of Ontario. R.S.O. 1937, c. 100, s. 102 (3); 1938, c. 18, s. 6 (3). Investment of court funds.

(5) Any money which is available for investment shall be invested in securities issued or guaranteed by the Province of Ontario or in debentures issued under *The Tile Drainage Act* and purchased from the Treasurer of Ontario, provided that the Accountant shall not hold debentures in excess of \$50,000 issued by any one municipality under *The Tile Drainage Act*. R.S.O. 1937, c. 100, s. 102 (4); 1938, c. 18, s. 6 (4); 1939, c. 23, s. 3. Investment in provincial securities etc. Rev. Stat., c. 392.

Debentures
invested in
not open
to question.

(6) When an investment in debentures of a municipal corporation is made, the validity of the debentures shall not thereafter be open to question but they shall be deemed to be valid. R.S.O. 1937, c. 100, s. 102 (5).

Trust
corporation
may be
employed.

(7) The finance committee may employ a trust company to make the investments of money paid into court or as custodian of the securities representing investments of the money, on such terms and conditions as may be agreed. R.S.O. 1937, c. 100, s. 102 (6); 1938, c. 18, s. 6 (5).

Investment
of court
funds.

(8) When an amount exceeding \$50,000 is in court to the credit of an account for investment the Accountant may, if so directed by the finance committee, notwithstanding any order for payment out of court, withhold payment for three months to enable him to realize upon the securities in which money in court is invested. R.S.O. 1937, c. 100, s. 102 (7).

Money, etc.
vested in
Accountant,
Guardian,
etc., to be
deemed to
be held in
trust for
Crown.

106. All money, securities, effects and real or personal property vested in or held by the Accountant or by the Official Guardian shall be deemed to be vested in them in trust for His Majesty, but may, nevertheless, be paid out, sold, disposed of, assigned, conveyed or dealt with in accordance with any statute or the rules, or with any judgment, or order of court, or order of the Lieutenant-Governor in Council. R.S.O. 1937, c. 100, s. 103.

Payment of
moneys to
which
foreigners
are entitled.

107. Where persons who are subjects of any foreign country having a consul in Canada authorized to act as the official representative of such subjects, are entitled to moneys which have been paid into court, or which are in the hands of an executor or administrator, the moneys may be paid to the consul. R.S.O. 1937, c. 100, s. 104.

SUITORS FEE FUND ACCOUNT

Suitors
fee fund.

108. The Suitors Fee Fund Account shall be kept and managed by the finance committee, and the Court of Appeal or any judge of the Supreme Court may with the approval of the finance committee apply so much of the money at the credit of the account as may be necessary for the protection of any infant or other person not *sui juris* or *non compos mentis*, on whose behalf proceedings may be had in the court, or may be ordered to be had in another court, and the finance committee may also, from time to time, order to be paid out of the money at the credit of the account any sum required

to make good a default in respect of any suitor's money or securities from any mistake, act or omission of any officer of the court, but such payment shall not prejudice the right to require the officer or his sureties to make good the loss occasioned by the mistake, act or omission. R.S.O. 1937, c. 100, s. 105.

RULES

109.—(1) There shall be a committee known as the rules committee which shall be composed of, Rules committee, establishment of.

- (a) the Chief Justice of Ontario, the Chief Justice of the High Court and five other judges of the Supreme Court to be appointed by the Chief Justice of Ontario;
- (b) two county or district court judges who shall be appointed by the Attorney-General;
- (c) the Attorney-General or such law officer of the Crown as he may from time to time appoint;
- (d) the Master of the Supreme Court; and
- (e) three barristers or solicitors who shall be appointed by the Benchers of the Law Society of Upper Canada in convocation. 1941, c. 24, s. 3 (2), *part*; 1945, c. 10, s. 1 (1).

(2) The Chief Justice of Ontario shall be the chairman of the rules committee and in his absence or at his request the Chief Justice of the High Court shall preside. 1945, c. 10, s. 1 (2). Chairman.

(3) The Registrar of the Supreme Court shall be *ex officio* the secretary of the rules committee. 1941, c. 24, s. 3 (2), *part*. Secretary.

(4) Each of the members of the rules committee appointed under clause *a*, *b* or *e* of subsection 1 shall hold office for a period of three years and shall be eligible for a reappointment. 1941, c. 24, s. 3 (2), *part*; 1942, c. 34, s. 18 (2). Tenure of office.

(5) In case of the resignation, death or inability to act of any member appointed under clause *a*, *b* or *e* of subsection 1, the Chief Justice of Ontario, Attorney-General or Benchers of the Law Society of Upper Canada, as the case may be, may appoint another member similarly qualified to hold office for the unexpired portion of the term of the member who has resigned or died or is unable to act. 1942, c. 34, s. 18 (3). Vacancy in office.

(6) A majority of the members of the rules committee shall constitute a quorum. Quorum.

Annual
meeting.

(7) The rules committee shall hold an annual meeting on the first Monday following Christmas Day which is not a holiday, at the City of Toronto or at such other time and place as the chairman may direct.

Other
meetings.

(8) The chairman may at any time and upon the written request of any three members shall direct the secretary to call a meeting of the rules committee at such time and place as he may determine. 1941, c. 24, s. 3 (2), *part*.

Power to
make rules.

(9) Subject to the approval of the Lieutenant-Governor in Council, the rules committee may at any time amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular for, R.S.O. 1937, c. 100, s. 106 (2), *part*; 1941, c. 24, s. 3 (3).

- (a) regulating the sittings of the courts;
- (b) regulating the pleading, practice and procedure in the Supreme Court and in the county and surrogate courts;
- (c) allowing service out of Ontario;
- (d) prescribing and regulating the proceedings under any statute which confers jurisdiction upon the court or a judge;
- (e) fixing the vacations; R.S.O. 1937, c. 100, s. 106 (2), cls. (a-e).
- (f) empowering the Master of the Supreme Court, or any officer sitting for him, or the local judges, or the local masters in respect of actions brought in their counties, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as are or may be done, transacted, or exercised by a judge of the Supreme Court in court upon motions for judgment in undefended actions, for the appointment of receivers by way of equitable execution and for *ex parte* injunctions and upon motions in chambers or as shall be specified in the rules except in respect to matters relating to,
 - (i) the liberty of the subject,
 - (ii) appeals and applications in the nature of appeals,
 - (iii) proceedings under *The Mental Incompetency Act*,
 - (iv) applications for advice under *The Trustee Act*,
 - (v) matters affecting the custody of children,

Rev. Stat.,
c. 230.

Rev. Stat.,
c. 400.

(vi) proceedings enabling infants to make binding settlements of their real and personal property on marriage; R.S.O. 1937, c. 100, s. 106 (2), cl. (f); 1947, c. 101, s. 11.

(g) regulating generally any matters relating to the practice and procedure of the courts or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect this Act and all other Acts respecting the courts; R.S.O. 1937, c. 100, s. 106 (2), cl. (g).

(h) regulating all fees payable to the Crown in respect of proceedings in any court. R.S.O. 1937, c. 100, s. 106 (2), cl. (h); 1941, c. 24, s. 3 (3).

(10) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that may be deemed necessary for adapting the same to the general practice and usage of the court unless that power is expressly excluded. Power to modify statutory provisions as to procedure.

(11) Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure. R.S.O. 1937, c. 100, s. 106 (3, 4). Provisions as to payment into or out of court of money, etc.

COUNCIL OF JUDGES

110.—(1) A council of the judges of the Supreme Court, of which due notice shall be given to all of them, shall assemble at least once in every year on such day as shall be fixed by the Lieutenant-Governor in Council for the purpose of considering the operation of this Act and of the rules and the working of the offices and the arrangements relative to the duties of the officers of the court, and of enquiring and examining into any defects which may appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court or by any other authority. R.S.O. 1937, c. 100, s. 107 (1). Council of judges.

(2) The council shall report to the Lieutenant-Governor what amendments or alterations, if any, it would be expedient to make in this Act or otherwise relating to the administration of justice, and what other provision, if any, it would be expedient to make for the better administration of justice. R.S.O. 1937, c. 100, s. 107 (2); 1941, c. 24, s. 4. Council to report to Lieutenant-Governor.

Extraordinary councils.

(3) An extraordinary council for the purposes mentioned in subsection 1 may also be convened at any time by the Lieutenant-Governor in Council. R.S.O. 1937, c. 100, s. 107 (3).

DELEGATION OF POWERS OF JUDGES

Delegation of powers of judges.

111.—(1) Where by this or any other Act any power or authority is conferred upon the judges of the Supreme Court or upon the judges of the High Court as a body they may respectively delegate such power or authority to a committee of themselves and when it is exercised by the committee the acts done by the committee shall have the same effect as if they had been done by the body by which the committee was appointed.

Quorum.

(2) The presence of a majority of the members of the committee shall be necessary to constitute a quorum for the transaction of business. R.S.O. 1937, c. 100, s. 108 (1, 2).

Application of subs. 1.

(3) Subsection 1 shall not apply to a council of the judges provided for by section 110. R.S.O. 1937, c. 100, s. 108 (3); 1941, c. 24, s. 5.

QUORUM OF MEETINGS OF JUDGES

Quorum of meetings of judges.

112. Where by this Act any power is conferred on the judges of the Supreme Court or of the High Court, the power may be exercised at a meeting duly called at which in the case of the Supreme Court at least seven of the judges are present, and in the case of the High Court at least five of the judges are present. R.S.O. 1937, c. 100, s. 109.

LOCAL JUDGES OF THE HIGH COURT DIVISION

County court judges to be local judges of High Court.

113.—(1) Except in the County of York, every judge of a county court shall be a local judge of the High Court for the purposes of his jurisdiction in actions in the Supreme Court, and may be styled a local judge of the Supreme Court, and shall, in all causes and actions in the Supreme Court, have, subject to the rules, power and authority to do and perform all such acts and transact all such business in respect to matters and causes in or before the High Court as he is or may be by statute or the rules empowered to do and perform.

Powers of county judge outside county for which he is appointed.

(2) Where a county court judge is authorized to exercise jurisdiction in a county other than the county for which he is appointed, he shall, while exercising jurisdiction in such county, have the like power as a local judge of the High Court as though he were a judge of the county court of such county. R.S.O. 1937, c. 100, s. 110.

SHERIFFS, ETC.

114. Sheriffs, deputy sheriffs, jailers, constables and other peace officers, shall aid, assist and obey the court and the judges thereof in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever by the rules or by the order of the court or of a judge required so to do. R.S.O. 1937, c. 100, s. 111.

Sheriffs,
jailers, etc.,
to obey
orders of
the court.

PRISONS OF THE COURT

115. All jails in Ontario shall be prisons of the court. R.S.O. 1937, c. 100, s. 112.

Jails to be
prisons of
the court.

OATHS AND AFFIDAVITS

116. Every officer of the Supreme Court shall, for the purposes of any proceeding before him, have power to administer oaths and to examine parties and witnesses. R.S.O. 1937, c. 100, s. 113.

Administra-
tion of oaths.

WITNESS FEES

117. A public official or other witness subpoenaed or called upon to produce before any court or other tribunal any public or other document shall not be entitled to more than ordinary witness fees, unless the court or other tribunal otherwise orders. R.S.O. 1937, c. 100, s. 114.

Fees of
certain
officers
producing
documents.

PROVISIONS APPLICABLE TO COUNTY COURTS

118. In addition to the provisions of this Act which are expressly made applicable to all courts or county courts or are otherwise by their terms so applicable, sections 24, 32, 35, 38, 51 to 53, 60 to 64, 75, 76, 78, 114 and 115, shall *mutatis mutandis* apply to the county courts. R.S.O. 1937, c. 100, s. 115.

Certain
sections to
apply to
county
courts.

COMMISSIONS FOR HOLDING SITTINGS, ETC.

119. This Act shall not affect the power to issue commissions for the discharge of civil or criminal business on circuit or otherwise. R.S.O. 1937, c. 100, s. 116.

Power to
issue
commissions
not to be
affected.

120. Any judge presiding at any sittings of the court or in chambers shall be deemed to constitute the court. R.S.O. 1937, c. 100, s. 117.

Judge to
constitute
court.

ACCESS TO BOOKS

Books in which writs, judgments, etc., are entered to be open to inspection.

121.—(1) Every person shall have access to and be entitled to inspect the books of the Supreme Court and of the county courts, containing records or entries of the writs issued, judgments entered, and chattel mortgages and bills of sale filed, and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the causes or matters in respect of which the access or inspection is sought.

Production of writs of summons, etc.

(2) Every officer having the charge or custody of any such book shall upon request produce for inspection any writ of summons or copy thereof so issued, and any judgment roll, or chattel mortgage, or bill of sale so filed in his office, or of which records or entries are by law required to be kept in such book.

Fees for inspection.

(3) The fees payable in respect of such inspection shall be twenty-five cents for a general search, and ten cents for each writ of summons, judgment roll, chattel mortgage or bill of sale inspected, and ten cents per folio shall also be payable for all extracts, whether made by the person making the search or by the officer.

Persons entitled to search and to copies of records of courts.

(4) A person affected by any record in any court, whether it concerns the King or other person, shall be entitled, upon payment of the proper fee, to search and examine the same and to have an exemplification or a certified copy thereof made and delivered to him by the proper officer. R.S.O. 1937, c. 100, s. 118.

PLEADINGS TO BE IN ENGLISH

Writs, pleadings, and proceedings to be in English.

122. Writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other process, or technical words, may be in the same language as has been commonly used. R.S.O. 1937, c. 100, s. 119.

DEMISE OF CROWN

Demise of Crown not to affect pending proceedings.

123. No action or other proceeding in any court shall be discontinued or stayed by reason of the demise of the Crown, but the same shall be proceeded with as if such demise had not happened. R.S.O. 1937, c. 100, s. 120.

SERVICE OF PROCESS ON THE LORD'S DAY

Service of process on the Lord's day.

124. No person upon the Lord's Day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order or judgment, except in cases of treason,

felony, or breach of the peace, and the service of every such writ, process, warrant, order or judgment on the Lord's Day shall be void, and the person so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he had done the same without any writ, process, warrant, order or judgment. R.S.O. 1937, c. 100, s. 121.

ACTIONS ON BONDS

125.—(1) In an action commenced or prosecuted in any court upon a bond for non-performance of any covenant or agreement in any indenture, deed or writing the plaintiff may assign as many breaches as he thinks fit, and, upon trial of such action, not only such damages and costs as have heretofore been usually assessed shall be assessed, but also damages for such of the breaches so assigned as the plaintiff upon the trial of the issues shall prove, and the like judgment shall be entered as heretofore in such action.

In actions on bonds, etc. plaintiff may assign as many breaches as he pleases.

(2) If judgment is given for the plaintiff by confession or default he may suggest as many breaches of the covenants and agreements as he thinks fit, and the damages that he has sustained thereby shall be assessed, and if the defendant after such judgment entered and before any execution executed, pays into the court in which the action is brought to the use of the plaintiff such damages so to be assessed by reason of all or any of the breaches of such covenants or agreements, together with the costs of suit, a stay of execution on the judgment shall be entered upon record.

Default judgment.

(3) If by reason of any execution executed the plaintiff or his executors or administrators are fully paid or satisfied, all such damages so to be assessed, together with his or their costs of suit and all reasonable charges and expenses for executing the execution the body, land or goods of the defendant shall be thereupon forthwith discharged from the execution, which shall likewise be entered upon record; but such judgment shall, nevertheless, remain, continue and be as a further security to answer to the plaintiff and his executors or administrators such damages as shall or may be sustained for further breach of any covenant or agreement in the same indenture, deed or writing contained upon which the plaintiff may apply to the court in which judgment is entered for leave to issue execution upon the judgment against the defendant, or his executors or administrators, suggesting other breaches of the covenants or agreements, and to call upon him or them to show cause why execution shall not be awarded upon the judgment, upon which the court shall make such order as may be deemed just.

Judgment to remain to answer any further breach.

Stay of
proceedings.

(4) Upon payment or satisfaction of such future damages, costs and charges, all further proceedings on the judgment shall again be stayed, and so *loties quoties*, and the defendant, his body, land or goods shall be discharged out of execution. R.S.O. 1937, c. 100, s. 122.

SET OFF

Mutual
debts to be
set off
against the
other.

126. Where there are mutual debts between the plaintiff and defendant, or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party one debt may be set against the other. R.S.O. 1937, c. 100, s. 123.

Mutual
debts may
be set off
except where
one accrues
by reason of
penalty.

127.—(1) Mutual debts may be set against each other, notwithstanding that such debts are deemed in law to be of a different nature, except where either of the debts accrue by reason of a penalty contained in any bond or specialty.

Judgment
only for
balance due
after set off.

(2) Where either the debt for which the action is brought or the debt intended to be set against the same has accrued by reason of any such penalty, the debt intended to be set off shall be pleaded and it shall be shown by the pleading how much is truly and justly due on either side, and if the plaintiff recovers in any such action, judgment shall be entered for no more than appears to be truly and justly due to the plaintiff after one debt is set against the other. R.S.O. 1937, c. 100, s. 124.

Defendant
to be entitled
to judgment
for balance
due after
set off.

128. If, upon a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant shall be entitled to judgment for the balance remaining due to him. R.S.O. 1937, c. 100, s. 125.

PAYMENT POST DIEM

Plea of pay-
ment bar
in action of
debt, etc.

129. Where an action is brought upon any bill, or where action is brought upon any judgment, if the defendant has paid the money due upon the bill or judgment the payment may be pleaded in the action, and where an action is brought upon a bond which has a condition or defeazance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have, before the action brought, paid to the obligee, his executors or administrators the principal and interest due by the condition or defeazance of the bond, though the payment was not made strictly according to the condition or

defeazance, yet it may nevertheless be pleaded in the action, and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeazance and had been so pleaded. R.S.O. 1937, c. 100, s. 126.

130. If, at any time pending an action upon any bond with a penalty, the defendant brings into court all the principal money and interest due on the bond, and also all such costs as have been expended in any suit upon the bond, the money so brought in shall be deemed and taken to be in full satisfaction and discharge of the bond, and the court may give judgment to discharge the defendant of and from the same accordingly. R.S.O. 1937, c. 100, s. 127.

Principal, interest, and costs brought into court pending action upon bond.

ACTIONS OF ACCOUNT

131. Actions of account may be brought and maintained against the executors or administrators of a guardian, bailiff or receiver, and also by one joint-tenant or tenant in common, his executors or administrators, against the other as bailiff for receiving more than comes to his just share or proportion, and against the executor or administrator of such joint-tenant or tenant in common. R.S.O. 1937, c. 100, s. 128, *amended*.

Actions of account by and between joint tenants as bailiffs, etc.

PERPETUATING TESTIMONY

132. Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any office or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of the event, shall be entitled to maintain an action in the Supreme Court to perpetuate any testimony which may be material for establishing his claim or right, and all laws, rules and regulations, not contrary to this section, in force or in use in suits to perpetuate testimony, or respecting depositions taken in such actions in making such depositions, shall be in force and used and applied in all actions instituted under this section and in respect to depositions taken in the action. R.S.O. 1937, c. 100, s. 129.

Actions to perpetuate testimony.

133. In all actions instituted under section 132 touching any office or any other matter or thing in which the Crown may have any estate or interest, it shall be lawful to make the Attorney-General a party defendant thereto, and in all proceedings in which the depositions taken in any such action in which the Attorney-General was so made a defendant may be offered in evidence, the depositions may be admissible

Attorney-General may be party defendant in such actions in which the King may have any estate or interest.

notwithstanding any objection to the depositions upon the ground that the Crown was not a party to the action in which the depositions were taken. R.S.O. 1937, c. 100, s. 130.

INDEMNITY TO PERSONS ACTING UNDER JUDGMENT

Protection
of persons
acting on
order or
judgment.

134. Any order or judgment of the court made in an action or upon an originating motion, special case or in any other way permitted by the rules or any statute shall effectually protect and indemnify any person acting thereon in good faith. R.S.O. 1937, c. 100, s. 131.

CONTEMPT

Court may
appoint
person to
execute
instrument
for person
in contempt.

135.—(1) When any person has been directed by any judgment or order to execute any deed or other instrument, or make a surrender or transfer, and has refused or neglected to execute the deed or instrument, or make the surrender or transfer, and has been committed to prison under process for such contempt, or, being confined in prison for any other cause, has been charged with or detained under process for such contempt, and remains in prison, the court may grant a vesting order or may order or appoint an officer of the court to execute the deed or other instrument, or to make the surrender or transfer for and in the name of such person.

Effect of
instrument.

(2) The execution of such deed or other instrument, or the surrender or transfer in his name made by such officer, shall in all respects have the same force and validity as if the same had been executed or made by the person himself.

Discharge
of person in
contempt.

(3) Thereupon the person in contempt shall be considered as having cleared his contempt, except as regards the payment of the costs of the contempt, and shall be entitled to an order that he be discharged from custody, and the court shall make such order as shall be deemed just touching the payment of the costs of or concerning the deed or other instrument, surrender or transfer. R.S.O. 1937, c. 100, s. 132.

Power of
sequestrator
in cases of
contempt.

136.—(1) Where a person is committed for a contempt in not delivering to any person, or depositing in court or elsewhere, as by any order may be directed, books, papers, or any other articles or things, any sequestrator appointed under any commission of sequestration shall have the same power to seize and take the books, papers, or other articles or things, being in the custody or power of the person against whom the sequestration issues, as he would have over his own property, and thereupon the books, papers, or other articles or things so seized and taken shall be dealt with as the court may deem proper.

(2) After such seizure the court may, upon the application of the prisoner or of any other person in the cause or matter, or upon any report, make such order for the discharge of the prisoner upon such terms as to costs and otherwise as the court may deem proper. R.S.O. 1937, c. 100, s. 133.

137. Where any person committed for a contempt is entitled to his discharge upon applying to the court but omits to make the application, the court may compulsorily discharge the person from custody and direct payment of the costs of the contempt out of any funds belonging to him over which the court may have power, or may order payment of the costs by the person. R.S.O. 1937, c. 100, s. 134.

CHARGING ORDERS ON STOCKS, ETC.

138.—(1) If a person against whom a judgment has been entered in any of His Majesty's courts in Ontario has any government stock, funds or annuities, or any stock or shares of or in a public company in Ontario, whether incorporated or not, standing in his name in his own right, or in the name of any person in trust for him, a judge of the Supreme Court, on the application of any judgment creditor, may order that the stock, funds, annuities, or shares or such of them or such part thereof as he thinks fit shall stand charged with the payment of the amount for which judgment has been so recovered, and interest thereon, and the order shall entitle the judgment creditor to all such remedies as he would have been entitled to if the charge had been made in his favour by the judgment debtor; but no proceedings shall be taken to have the benefit of the charge until after the expiration of six months from the date of the order. R.S.O. 1937, c. 100, s. 135.

(2) Every such order shall be made in the first instance *ex parte* and without any notice to the judgment debtor, and shall be an order to show cause only, and the order, if any government stock, funds or annuities standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected, shall restrain any transfer thereof being made in the meantime and until the order has been made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected by the order shall in like manner restrain such public company from permitting a transfer thereof.

(3) If, after notice of such order to the person to be restrained thereby, or, in the case of a corporation, to any authorized agent of the corporation, and before the order is

discharged or made absolute, the corporation or person permits any such transfer to be made, the corporation or person so permitting the transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor.

When order
absolute.

(4) Unless the judgment debtor, within a time to be mentioned in such order, shows to a judge sufficient cause to the contrary the order shall, after proof of notice thereof to the judgment debtor, his solicitor or agent, be made absolute.

Varying or
discharging
orders.

(5) A judge, upon the application of the judgment debtor or any person interested, may discharge or vary such order. R.S.O. 1937, c. 100, s. 136.

Property of
judgment
debtors
defined and
extended.

(6) This section shall extend to the interest of a judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stock, funds, annuities or shares, as also in the dividends, interest or annual produce of any such stock, funds, annuities or shares.

Order affect-
ing funds
in court.

(7) Where any such judgment debtor has any estate, right, title or interest, vested or contingent, in possession, remainder, or reversion in or to stock, funds, annuities or shares standing in the name of the Accountant of the Supreme Court or in or to the dividends, interest or annual produce thereof, the judge may make any order as to the stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of the judgment debtor.

Effect of
order.

(8) No such order as to any stock, funds, annuities or shares standing in the name of the Accountant, or as to the interest, dividends, or annual produce thereof, shall prevent any incorporated bank or any public company from permitting any transfer of the stock, funds, annuities or shares, or payment of the interest, dividends or annual produce thereof, in such manner as the Supreme Court may direct, or shall have any greater effect than if the judgment debtor had charged the stock, funds, annuities or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor with the amount of the sum mentioned in the order. R.S.O. 1937, c. 100, s. 137.

PENAL ACTIONS

139.—(1) In any penal action brought in good faith in which the defendant sets up a prior judgment the plaintiff may reply in avoidance of the prior judgment that the prior judgment was had by covin or collusion, and no release by any person before or after action for a penalty shall be a ground for staying the action. Reply in penal actions.

(2) No plaintiff in any such action shall be permitted to set up by way of reply, or otherwise, any charge of covin or collusion, where the merits of the matter in question in the action or a like charge of covin or collusion have been once tried and found either for or against the plaintiff. R.S.O. 1937, c. 100, s. 138. Exception.

140. No person shall sue as a common informer in a penal action unless he is *sui juris*. R.S.O. 1937, c. 100, s. 139. Informer must be sui juris.

141. No penal action brought by a common informer shall be compounded without the leave of the court. R.S.O. 1937, c. 100, s. 140. Compounding penal action.

QUO WARRANTO PROCEEDINGS

142.—(1) Except in the cases mentioned in section 143, all proceedings against any person who unlawfully claims or usurps, or is alleged unlawfully to claim or to usurp any office, franchise or liberty, or who has forfeited or is alleged to have forfeited any franchise by reason of non-user or mis-user thereof, which were formerly instituted or taken by writ of *quo warranto*, or by information in the nature of a writ of *quo warranto*, shall be instituted and taken, where the proceeding is by the Attorney-General *ex officio*, by notice of motion calling on the person against whom the proceeding is taken to show cause why he unlawfully exercises or usurps such office, franchise or liberty. Quo warranto writ of, superseded, in certain cases, proceedings in lieu of.

(2) Where the proceeding is at the instance of a relator it shall be taken in the name of His Majesty on the relation of such person, and such person shall before serving the notice of motion give security for the due and effectual prosecution thereof in like manner as nearly as may be and in the like amount as is, according to the practice of the Supreme Court, required to be given on an application to quash a conviction or order made by a justice of the peace, or in such manner and amount as the court may direct. R.S.O. 1937, c. 100, s. 141. Where relator named, proceedings how framed.

Issue may
be directed,
or
injunction,
etc., granted.

(3) The court may direct an issue for the trial of the matters in question on any such application, and may grant an injunction or a mandatory order in aid of the proceedings, or for the purpose of enforcing the judgment or order which is pronounced thereon. R.S.O. 1937, c. 100, s. 142.

Practice and
appeals.

(4) The practice and procedure, including the right of appeal, shall be, in all other respects, in accordance with the ordinary practice and procedure of the Supreme Court. R.S.O. 1937, c. 100, s. 143.

Municipal
and school
officers.

143.—(1) Where it is intended to call in question the right of any person claiming to be a municipal officer, or an officer of a school corporation, to the office which he claims to hold, exercise or occupy as such officer, or the right of a member of any school board or school corporation to have, hold or enjoy any office, either as a member of such board or corporation or otherwise under the school laws of Ontario, and subsection 2 does not apply to the trial and determination of such question, the matter shall be tried and determined by the judge of the county court of the county in which the duties of the office are to be performed, in a summary manner, and the proceedings shall be the same, as nearly as may be, as those provided for trying and determining a complaint respecting the validity or mode of conducting the elections of school trustees in an urban municipality, excepting that such judge shall have the same power to award costs to either party to the proceedings as he would have if the same were a proceeding in the county court. R.S.O. 1937, c. 100, s. 144.

Where other
special
statutory
provision,
subs. 1 not
to apply.

(2) Nothing in subsection 1 shall apply to or affect the proceedings in cases for which special provision is made by the municipal or school laws of Ontario, but in all such cases the proceedings shall be instituted and taken in the manner provided by those Acts, and not otherwise. R.S.O. 1937, c. 100, s. 145.

CERTAIN PRACTICE AND PROCEDURE NOT AFFECTED

Criminal
matters and
Dominion
controverted
elections not
affected.

144. Nothing in this Act shall affect the practice or procedure in criminal matters, or matters connected with Dominion controverted elections. R.S.O. 1937, c. 100, s. 146.

CHAPTER 191

The Jurors Act

1. In this Act,Interpre-
tation.

- (a) "county" includes district;
- (b) "county court" includes district court;
- (c) "county selectors" includes district selectors;
- (d) "sheriff" includes a coroner, an elisor and every other officer to whom the return of jury process belongs.
R.S.O. 1937, c. 108, s. 1.

**QUALIFICATIONS, EXEMPTIONS AND DISQUALIFICATIONS OF
JURORS**

2.—(1) Subject to section 42, and unless exempted or disqualified, every male person 21 or more years of age, being a British subject by birth or naturalization and in the possession of his natural faculties, and not infirm or decrepit, who or whose wife is assessed upon the last revised assessment roll as owner or tenant in respect of real property of the value of not less than \$600 in cities and \$400 in towns, villages and townships shall be qualified and liable to serve as a juror on grand and petit juries in the Supreme Court, and in all courts of civil or criminal jurisdiction within the county in which he resides.

(2) Where property is assessed as the property of two or more persons jointly, they shall be treated as if severally assessed for equal proportions of the property. R.S.O. 1937, c. 108, s. 2.

3.—(1) The following persons shall be exempt from being returned and from serving as grand or petit jurors, and their names shall not be entered on the rolls prepared and reported by the selectors of jurors:

- 1. Every person 70 or more years of age.
- 2. Every member of the Privy Council of Canada and of the Executive Council of Ontario.
- 3. Every member of the Senate and of the House of Commons of Canada and of the Assembly.

4. The secretaries of the Governor-General and of the Lieutenant-Governor.
5. Every judge.
6. Every magistrate.
7. Every sheriff, coroner, jailer and keeper of a house of correction or lock-up.
8. Every sheriff's officer and constable.
9. Every police officer and constable.
10. Every minister, priest or ecclesiastic under any form or profession of religious faith or worship.
11. Every barrister and every solicitor of the Supreme Court actually practising, and every student-at-law.
12. Every officer of any court of justice.
13. Every physician, surgeon, dental surgeon, pharmaceutical chemist and veterinary surgeon qualified to practise and actually practising.
14. Every member of His Majesty's navy, army or air force on full pay.
15. Every pilot and seaman engaged in the pursuit of his calling.
16. Every head of a municipal council.
17. Every editor, reporter and printer of any public newspaper or journal.
18. Every person employed in the actual working of a railway, street railway or public commission carrying on the business of developing, transmitting or distributing electrical power or energy.
19. Every telegraph and telephone operator.
20. Every fireman belonging to any fire department or company, who has procured the certificate authorized by section 1 of *The Firemen's Exemption Act*, during the period of his enrolment and continuance in actual duty as such fireman; and every fireman who is entitled to and who has received the certificate authorized by section 4 of that Act; but no fireman shall be exempt from serving as a juror unless the captain or other officer of the fire department or company, at least five days before the time appointed for

the selection of jurors, notifies to the clerk of the municipality the names of the firemen belonging to his department or company, and residing within the municipality, who are exempt and claims exemption for them. 1941, c. 25, s. 1; 1944, c. 58, s. 8.

(2) Every person who is under subpoena or is likely to be called as a witness in any civil or criminal proceeding shall be exempt from being returned and from serving as a grand or petit juror at any sittings of a court at which such proceeding might be tried, and his name shall not be entered on the rolls prepared and reported by the selectors of jurors for any such sittings and if entered, shall be deleted therefrom. R.S.O. 1937, c. 108, s. 3 (2). Exemption where person under subpoena.

4. Service at a division court shall not exempt a juror from serving at any other court. R.S.O. 1937, c. 108, s. 4. Service at division courts not to exempt.

5. No person convicted of treason, felony, perjury or subornation of perjury, unless he has obtained a free pardon, shall be qualified to serve as a grand or petit juror. R.S.O. 1937, c. 108, s. 5. Convicted persons disqualified.

COUNTY SELECTIONS

6.—(1) The judge of the county court, the junior judge thereof, the mayor of any city situate in the county, the warden, the treasurer of the county, the treasurer of any such city, and the sheriff or in his absence the deputy sheriff, any three of whom shall be a quorum, shall be *ex officio* selectors of jurors from the jurors' rolls within their respective counties, and shall be known as county selectors. County selectors.

(2) The judge of the county court, and in his absence the junior judge, shall be the chairman, and in the absence of both, the county selectors may appoint a chairman *pro tempore*. R.S.O. 1937, c. 108, s. 5 (1, 2). Chairman.

(3) In the county of York, York county.

(a) the judge of the county court, the sheriff of the county of York, or in his absence his deputy, and the warden and treasurer of the county only shall attend when the selection is being made from the local municipalities of the county other than the city of Toronto;

(b) the senior of the junior judges, the sheriff of the city of Toronto, or in his absence his deputy, and the mayor and treasurer of the city of Toronto only shall attend when the selection is being made for the city of Toronto;

- (c) the senior of the junior judges shall be the chairman of the city section of the county selectors, and in his absence the members of that section may appoint from among themselves a chairman *pro tempore*. R.S.O. 1937, c. 108, s. 6 (3) *amended*.

Casting vote. (4) In case of an equality of votes the chairman of the meeting shall have a double or casting vote. R.S.O. 1937, c. 108, s. 6 (4).

When county clerk or clerk of county court a selector.

7. Where the county treasurer is a practising barrister or solicitor he shall be disqualified from acting as a county selector, and the clerk of the county council or, if he is a practising barrister or solicitor, the clerk of the county court shall be a county selector in the stead of the county treasurer. R.S.O. 1937, c. 108, s. 7.

Clerk of peace to attend meetings of selectors.

8. The clerk of the peace shall attend all meetings of the county selectors, and shall enter their proceedings and resolutions in a book kept for that purpose, but he shall have no voice in the selection of jurors, and shall not advise or express an opinion whether any name ought to be placed upon or omitted from the list of jurors. R.S.O. 1937, c. 108, s. 8.

Annual meeting of selectors.

9. The county selectors shall assemble annually at the office of the clerk of the peace or at the court house on the 15th day of September. R.S.O. 1937, c. 108, s. 9, *amended*.

Determining number of jurors for the year.

10. The county selectors shall at such meeting by resolution first determine and declare the number of grand and petit jurors respectively that will be required as jury panels for service at the courts during the ensuing year, and shall fix the total number of grand and petit jurors for the Supreme Court and for the inferior courts which the local municipalities shall return at three times the number declared by the resolution to be required. R.S.O. 1937, c. 108, s. 10.

Determining number of jurors from each municipality.

11. The county selectors shall then by resolution determine the number of grand and petit jurors for the Supreme Court and for the inferior courts to be returned for each local municipality, and the number of persons on the voters' list of each municipality, marked as qualified to serve on juries, shall form an approximate basis for determining the number of jurors to be returned by each local municipality, and the clerk of the peace shall produce for the use of the county selectors the voters' lists delivered to him by the clerks of the local municipalities under *The Voters' Lists Act*, or certified copies of such lists. R.S.O. 1937, c. 108, s. 11.

12.—(1) The county selectors shall also at such meeting by resolution determine the number of petit jurors to be drafted and returned to any sittings of the Supreme Court, the court of general sessions of the peace, and the county court for the current or ensuing year. Determining number of petit jurors to be drafted and returned to each court.

(2) The clerk of the peace shall forthwith transmit to the office of the Registrar of the Supreme Court and to the clerk of the county court a certified copy of such resolution, and such copies shall be filed in such offices. R.S.O. 1937, c. 108, s. 12. Copies of resolution to be transmitted and filed.

13. The county selectors may by resolution amend any resolution passed under sections 9 to 12 and either increase or decrease the number of jurors to be selected and returned by the local municipalities, the number to be selected by the county selectors, or the number of petit jurors to be drafted and returned to any sittings of the Supreme Court, the court of general sessions of the peace, or the county court, and in such case due notice thereof shall be given by the clerk of the peace to the persons entitled to notice of the original resolution. R.S.O. 1937, c. 108, s. 13. Power to amend resolutions.

14. The clerk of the peace shall within five days after the meeting of the county selectors notify in writing the clerk of each local municipality of the number of grand and petit jurors respectively required to be returned from the municipality. R.S.O. 1937, c. 108, s. 14. Clerk of the peace to notify clerks of local municipalities.

SELECTION AND DISTRIBUTION OF JURORS FROM THE ASSESSMENT ROLL

15. The head of the council, the clerk, the assessment commissioner and the assessors of every local municipality, any two of whom shall be a quorum, shall be *ex officio* the local selectors of jurors for the municipality. R.S.O. 1937, c. 108, s. 15. Local selectors.

16.—(1) The local selectors shall meet annually on the 10th day of October at the place where the meetings of the municipal council are usually held or at such other place within the municipality as may be appointed by the head of the council, or during his absence, or a vacancy in the office, by the clerk, for the purpose of selecting from the assessment roll the names of the persons qualified and liable to serve as jurors. When and where the selection to be made.

(2) The local selectors shall proceed from day to day until the selection is completed, and shall select such persons as in their opinion, or in the opinion of a majority of them, are, Principles by which selectors are to be governed.

from the integrity of their characters, the soundness of their judgment and the extent of their information, the most discreet and competent for the performance of the duties of jurors.

Assessment
rolls to be
produced.

(3) The clerk, or the assessment commissioner, or assessors, or such other officer or person who has the actual charge or custody of the assessment roll for the year and the proper voters' list shall bring them to such meeting.

Oath of
selectors.

(4) The local selectors, before entering upon the performance of their duties, shall severally make and subscribe the following oath:

I, *A. B.*, do swear (*or affirm, as the case may be*) that I will truly, faithfully and impartially, without fear, favour or affection, and to the best of my knowledge and ability, perform the duty of a local selector of jurors, and will select from the proper lists the requisite number of the most fit and proper persons to serve as jurors for the year 19.....

Sworn (*or affirmed*) before me, at....., 19.....
the.....day of....., 19.....

(Signed) *A. B.*

(Signed) *C. D.*

which oath a justice of the peace, a commissioner for taking affidavits or a notary public may administer. R.S.O. 1937, c. 108, s. 16.

Manner in
which local
selectors to
make list
from which
to select
jurors.

17.—(1) The local selectors shall, from the certified voters' lists for the municipality for the year, if the list has been certified, or if it has not been certified, then from the list for the year published by the clerk of the municipality, or if no such list has been published then from the last certified list, or if there is no certified list then from the last revised assessment roll, write down twice as many of the names of persons appearing by the last revised assessment roll to be possessed of the requisite property qualification and otherwise qualified to serve as jurors, as have been required by the county selectors to be selected and returned from the municipality; and the proper assessment roll shall in all cases be referred to by the local selectors for the purpose of determining who are exempt or disqualified from acting as jurors, and for such other purposes as are necessary in the discharge of their duty.

Selection to
be made in
alphabetical
order.

(2) The local selectors shall from year to year in making the selection proceed in alphabetical order, and shall write down consecutively in like order the names of all those persons qualified to serve as jurors and not exempt by law, until twice the total number required to be returned from

the municipality is obtained, and at each subsequent annual meeting the local selectors shall begin at the letter next to that at which they left off in the next preceding year, and so on until they have gone through all the remaining letters of the alphabet, when they shall begin again with the letter A.

(3) Where the local selectors obtain the names of a sufficient number of qualified persons after they have entered upon, but before they have exhausted the entire number of those qualified under any one letter, they shall at the next annual selection commence at the beginning of such letter, but shall not select from the names of any persons that were written down and selected from and returned in the next preceding year.

Procedure when number qualified under one letter not exhausted.

(4) Where, after discarding the names of those exempt or incapacitated, the number of qualified persons required by the local selectors to be selected from the municipality cannot be obtained, the local selectors shall place on the list the names only of such persons within the municipality as are qualified, and the number of jurors required shall be selected from such list, and the clerk shall notify the county selectors of the facts, and they shall at their next and subsequent selections have regard thereto.

Where number of names of duly qualified persons not sufficient.

(5) The local selectors shall select at least two-thirds of the persons whose names they have so written down, being those who in their opinion are the best qualified to serve as jurors, and shall place a number opposite each name so selected.

Local selectors to select two-thirds of names on list.

(6) The inability of the local selectors, after discarding the names of those exempt or incapacitated, to find twice the number of persons having the proper qualification that have been required by the county selectors to be selected and returned, or to find the number required by the county selectors to be selected and returned shall not invalidate or render irregular the selection by them of the jury list or panel, or render the same liable to challenge. R.S.O. 1937, c. 108, s. 17.

Jury panel not affected.

18. It shall not be necessary for the local selectors to refer to any name on the assessment roll which has not the letter J opposite to it in the voters' list, unless they suspect that names are not properly marked. R.S.O. 1937, c. 108, s. 18.

When selectors to question assessment roll.

19. In case of an equality of votes as to any question, the head of the council or, in the case of his absence or a vacancy in the office, the clerk shall have a double or casting vote. R.S.O. 1937, c. 108, s. 19.

Casting vote.

Jurors to
be selected
by ballot.

20.—(1) The local selectors shall prepare as many ballot papers of uniform and convenient size as there are names selected, and the ballot papers shall be numbered to correspond with the numbers opposite to the names of the two-thirds selected, and they shall then proceed to select by ballot the number of jurors required by the county selectors.

Manner of
balloting.

(2) The manner of balloting shall be as follows:

1. The local selectors shall place the ballot papers, correctly numbered, in a box or urn, and shall cause it to be shaken so as sufficiently to mix the ballot papers, and shall then openly draw from the box or urn indiscriminately one of the ballot papers, and declare openly the number on such ballot paper, whereupon the clerk, or one of the local selectors, shall immediately declare aloud the name of the person opposite whose name the corresponding number is placed on the list.
2. The name and addition of the person who has been so selected shall then be written down, and the local selectors shall proceed in like manner until the necessary number has been completed. R.S.O. 1937, c. 108, s. 20.

List to be
distributed
into four
divisions.

21.—(1) When the local selectors have completed the selection, they shall, for the purpose of the report thereof, distribute the names of the persons so selected into four divisions; the first consisting of persons to serve as grand jurors in the Supreme Court; the second of persons to serve as grand jurors in the inferior courts; the third of persons to serve as petit jurors in the Supreme Court; and the fourth of persons to serve as petit jurors in the inferior courts, and shall make such distribution according to the best of their judgment with a view to the relative competency of the persons to discharge the duties required of them respectively.

Idem.

(2) The distribution among the four divisions shall be made so that each division will contain the number of names required by the county selectors to be returned for such division. R.S.O. 1937, c. 108, s. 21.

Selectors to
make out a
duplicate
report, etc.

22.—(1) The local selectors shall make out in duplicate under their hands and seals, or under the hands and seals of such of them as perform the duty, a report (Schedule A) of their selection, ballot and distribution in which they shall set forth in alphabetical order the names of the persons selected.

Declaration
to be
subjoined
to the report.

(2) There shall be subjoined to each duplicate a declaration, subscribed by them, stating, each for himself, that he has made the selection, ballot and distribution to the best of his

judgment and information pursuant to this Act, and without fear, favour or affection, gain, reward or hope thereof, other than such fees as he is lawfully entitled to receive for the same under this Act.

(3) One of such duplicates shall, on or before the 25th day of October, be deposited by the local selectors with the clerk of the peace and the other with the clerk of the municipality, and they shall be kept on file for the use and information of all who may have lawful occasion to examine or make use of them.

Reports to be deposited and kept on file.

(4) In case of the loss or destruction of a duplicate report, the officer in whose office it was when lost or destroyed shall, as soon as reasonably may be, procure from the officer to whom the legal custody of the other duplicate report belongs, a certified copy thereof, and shall file it in his office, and it shall thenceforth be taken, received and acted upon in all respects as if it were the duplicate report lost or destroyed.

In case of loss, a copy of the duplicate report to be filed.

R.S.O. 1937, c. 108, s. 22.

23. The clerk shall enter in a book to be kept for that purpose the dates of the meetings of the local selectors, the persons present thereat and taking part therein, and the letters of the alphabet from which the selections are from year to year made, and, when the names in any letter have not been exhausted in any year, the clerk shall enter in the book the names and additions of all persons whose names begin with the last-mentioned letter that were written down and selected from and returned during the then current year.

Record to be kept by clerk of municipality.

R.S.O. 1937, c. 108, s. 23.

PREPARATION OF JURORS' BOOKS

24. The clerk of the peace shall in each year procure a book called the jurors' book, and shall keep it as nearly as may be in the form of Schedule B, and according to the directions contained in the notes to the Schedule.

Clerk of the peace to prepare jurors' books.

R.S.O. 1937, c. 108, s. 24.

25. From the reports of the local selectors made to the clerk of the peace for such year, or from such of them as have been made on or before the 25th day of October, the clerk of the peace shall, between the 25th day of October and the 10th day of November in such year, transcribe into the jurors' book, in alphabetical order, the names and additions of all persons selected to serve as grand and petit jurors, as the same are set forth and distributed in such reports.

Contents of jurors' book.

R.S.O. 1937, c. 108, s. 25.

Jurors' books to contain four rolls of jurors.

26. The names shall be transcribed into the book in four rolls, the first to be called "Roll of Grand Jurors to serve in the Supreme Court"; the second "Roll of Grand Jurors to serve in the Inferior Courts of Criminal Jurisdiction"; the third "Roll of Petit Jurors to serve in the Supreme Court"; and the fourth "Roll of Petit Jurors to serve in the Inferior Courts of Criminal and Civil Jurisdiction". R.S.O. 1937, c. 108, s. 26.

Names and addition of jurors.

27. The names and additions of all persons selected, balloted and reported to serve as jurors shall be transcribed in each of the rolls. R.S.O. 1937, c. 108, s. 27.

DIVISION OF JURORS' ROLLS

Division of jurors' rolls according to municipalities.

28. The jurors' rolls shall each be divided into local municipalities, and the names within each municipality shall be arranged alphabetically, and all the names in each of such rolls shall be numbered consecutively. R.S.O. 1937, c. 108, s. 28.

How the rolls are to be certified.

29. A certificate of the clerk of the peace shall be subjoined to each of such rolls certifying that he has carefully compared such roll with the reports made by the local selectors of jurors for the year, as such reports were on file in his office on the 25th day of October in such year, and that the roll contains a true and correct transcript of the names and additions of all persons so reported to serve as jurors. R.S.O. 1937, c. 108, s. 29.

Presenting and certifying jurors' rolls.

30.—(1) As soon as he has completed the jurors' book but not later than the 12th day of November in each year, unless the judge of the county court, for such reasons as he deems sufficient, extends the time for preparing the jurors' book, the clerk of the peace shall appear before the judge in his chambers and deliver to the judge the jurors' book so prepared by him together with the jurors' books for so many of the preceding years as may be required for proceeding with the preparation of the jurors' lists as hereinafter directed, and shall thereupon make oath before the judge,

(a) that he has carefully compared the jurors' rolls in the first-mentioned jurors' book with the reports made by the local selectors, as the same were on file in his office on the 25th day of October next preceding, and that to the best of his knowledge and belief such jurors' rolls contain a true and correct transcript of the names and additions of all persons reported by the local selectors; and

- (b) that the jurors' books secondly above-mentioned are those on file in his office for the years to which they purport respectively to relate, and that all entries therein were truly and faithfully made, without fraud or collusion of any kind, and according to the very truth.

(2) If the clerk of the peace has not been in office during all the time that the jurors' books have been on file he shall make oath that all entries made during the time that he has been in office have been truly and faithfully made without fraud or collusion of any kind, and according to the very truth, and that he verily believes that all other entries prior to his appointment were truly and faithfully made. R.S.O. 1937, c. 108, s. 30.

Where clerk of peace has not been in office during preceding years.

31. On the first occasion of bringing the jurors' book before the judge, there being no jurors' book for any preceding year, the oath to be made by the clerk of the peace shall be modified accordingly. R.S.O. 1937, c. 108, s. 31.

Modification of oath.

32. If the clerk of the peace is unable to make the oath required by subsection 2 of section 30, as to the entries made in any of such jurors' books prior to the time of such book coming into his custody, or has reason to suspect that any original entry in such book has, after its original completion, been erased, mutilated or altered, he shall in lieu of that part of the oath make oath that, as to such entry, he is unable to speak, but that from circumstances which have come to his knowledge, or of which he has been informed, he has reason to doubt the correctness thereof, or has reason to suspect that an original entry has been erased, mutilated or altered. R.S.O. 1937, c. 108, s. 32.

If the clerk of the peace suspects previous errors or fraud, he is to state the same.

33.—(1) Where the clerk of the peace has made an affidavit in the terms of section 32, the judge shall examine and inquire by the oath of such persons as may be informed thereof, into the supposed incorrect entries, erasures, mutilations or alterations, their nature and extent, and by whom, when and for what purpose they were made and shall report the same to the Attorney-General, and shall cause the incorrect entries, erasures, mutilations or alterations to be rectified, and the books restored to their original state as nearly as may be, according to the best information he has been able to obtain of or concerning the same.

Inquiry as to error or fraud.

(2) For the purposes of subsection 1, the judge shall possess all the powers which may be conferred upon a commissioner under *The Public Inquiries Act*. R.S.O. 1937, c. 108, s. 33.

Powers of judge. Rev. Stat., c. 308.

Certifying
jurors'
books.

34. The judge shall thereupon certify under his hand and seal in each of such books, the receipt thereof and the oath upon which the same has been received, and such books shall be deposited with the clerk of the peace and shall be the jurors' rolls from which the selection of jurors shall be made as hereinafter provided. R.S.O. 1937, c. 108, s. 34.

Meeting of
county
selectors
and selection
of lists.

35.—(1) The county selectors shall meet at the court house or in the judge's chambers on a day to be fixed by the chairman, not earlier than the 12th day of November and not later than the 15th day of December in each year, at 10 o'clock in the forenoon, to proceed with the selection of jurors from the jurors' rolls prepared under section 26, and shall proceed as far as practicable from day to day until the selection is completed.

Selection to
be completed
before end
of year.

(2) The county selectors shall so arrange and proceed that the selection of jurors by them and the preparation of the jury lists shall be completed and the lists duly certified and filed in the office of the clerk of the peace before the 31st day of December in the same year.

Oath of
selectors.

(3) Before entering upon the performance of their duties the county selectors shall severally take and subscribe the following oath:

I, A. B., do swear (*or affirm as the case may be*) that I will truly, faithfully and impartially, without fear, favour or affection, and to the best of my knowledge and ability, perform the duty of a county selector, and will select from the proper rolls the requisite number of the most fit and proper persons to serve as jurors for the year 19.....

Sworn (*or affirmed*) before me at.....,
the.....day of....., 19.....

(Signed) A. B.

(Signed) C. D.

How admin-
istered and
recorded.

(4) A justice of the peace, a commissioner for taking affidavits or a notary public may administer the oath, and an entry thereof shall forthwith be made in the minute book of the county selectors. R.S.O. 1937, c. 108, s. 35.

Selection of
jurors from
jurors' rolls.

36.—(1) The county selectors shall then proceed to select from the jurors' rolls the names of the requisite number of persons to serve as jurors for such year, being those persons who, in the opinion of the selectors or of a majority of them, are, from the integrity of their character, the soundness of their judgment, and the extent of their information the most discreet and competent for the performance of the duties of jurors, and in making the selection the county selectors

may, if they think fit, select a proportion of the names for each jury list from each local municipality.

(2) The county selectors shall first select the grand jury list for the Supreme Court, and when they have decided upon the selection of any person, his name and addition shall be forthwith inserted by the clerk of the peace in the minute book. Clerk of peace to enter names of jurors selected.

(3) The names of the persons so selected, alphabetically arranged, with their places of residence and additions, shall then be copied by the clerk of the peace into the jurors' book with the title "The Grand Jury List for the Supreme Court", and shall be numbered consecutively, and also with the number of each name on the roll of grand jurors for the Supreme Court. Names selected to be inserted in list.

(4) The clerk of the peace shall thereupon mark each of such names on the last-mentioned roll as transferred to the jury list by a reference to the number belonging to it on that list. Clerk of the peace to enter names in the book.

(5) The list of names so selected and transferred shall be the grand jury list for the Supreme Court for the year next after that in which it has been so prepared. R.S.O. 1937, c. 108, s. 36. List so made to be the grand jury list for Supreme Court.

37. After the grand jury list for the Supreme Court has been completed, the required number of names of persons to serve as grand jurors in the inferior courts shall, in like manner, be selected and transferred to a similar list in the same book, with the title "The Grand Jury List for the Inferior Courts" for such next year, and the last-mentioned list shall be the grand jury list for the inferior courts for the year next after that in which it has been so prepared. R.S.O. 1937, c. 108, s. 37. Grand jury list for inferior courts to be made in like manner.

38. The required number of names shall in like manner be selected and transferred from the roll of jurors to serve as petit jurors in the Supreme Court to the petit jury list for the Supreme Court for such year, and lastly from the roll of jurors to serve as petit jurors in the inferior courts to the petit jury list for the inferior courts for such year. R.S.O. 1937, c. 108, s. 38. Lists of petit jurors of Supreme Court and inferior courts.

39. The number to be selected from the jurors' rolls for a jury list shall be the number of grand jurors that the county selectors have determined to be requisite for the year, and of petit jurors for the Supreme Court and inferior courts respec- Number to be selected for jury list.

tively the number theretofore determined by the county selectors to be requisite as the panels for the year, with one-fourth the number thereof added thereto. R.S.O. 1937, c. 108, s. 39.

Selection may be made before transfer to jurors' books.

40. The county selectors may prepare any of the jury lists before the previous lists, or any of them, have been transferred to the jurors' book. R.S.O. 1937, c. 108, s. 40.

The chairman and clerk of the peace to certify books.

41. So soon as the four jury lists have been so prepared the chairman and the clerk of the peace shall certify under their hands in the jurors' book, immediately after each of such jury lists, that the same was prepared from the proper roll, as the law directs, and the date of its preparation, and the jurors' book, with the jury lists so certified, shall then be filed in the office of the clerk of the peace. R.S.O. 1937, c. 108, s. 41.

DISTRICT SELECTIONS

District selectors.

42.—(1) In a provisional judicial district where there are two judges of the district court, the judges and the sheriff, and where there is but one judge, the judge, the clerk of the district court and the sheriff, any two of whom shall be a quorum, shall be the district selectors of jurors. R.S.O. 1937, c. 108, s. 42 (1); 1939, c. 47, s. 14 (1).

To have powers and duties of county selectors.

(2) Save as herein otherwise provided the district selectors of jurors shall perform the like duties and possess the like powers as county selectors of jurors, and the sheriff and clerk of the peace of the district shall respectively perform the like duties and possess the like powers with respect to the selection, empanelling and summoning of jurors and otherwise as the sheriff and the clerk of the peace of a county.

Local selectors.

(3) The provisions of this Act with regard to the selection and distribution of jurors by the local selectors of jurors shall apply to every local municipality in a provisional judicial district.

Number of grand and petit jurors to be returned.

(4) After the district selectors at the meeting to be held as provided in section 9 have determined and declared the number of grand and petit jurors respectively that will be required as jury panels for service at the courts during the ensuing year, they shall by resolution fix the total number of grand and petit jurors for the Supreme Court, and for the inferior courts, which shall be returned by the local municipalities, and the total number which shall be selected by the district selectors from territory without municipal organization. R.S.O. 1937, c. 108, s. 42 (1-4).

(5) The district selectors shall then proceed to select, Selection by district selectors. from among the male persons 21 or more years of age resident in territory without municipal organization, a list of persons to serve as grand and petit jurors respectively with those to be selected from the local municipalities. R.S.O. 1937, c. 108, s. 42 (5).

(6) No person shall be selected to serve as a juror from Non-eligibility. territory without municipal organization who is exempted or disqualified under this Act.

(7) No property qualification shall be required in the case Property qualification. of any person selected from territory without municipal organization.

(8) In making up any list of jurors from territory without Use of voters' list, etc. municipal organization, the district selectors may have recourse to the last voters' list prepared and certified for such territory and to any assessment or collector's roll prepared for school purposes, and may proceed upon any information furnished by such list or roll or possessed or acquired by them in any other manner, but the persons selected shall be such as from the integrity of their character, the soundness of their judgment and the extent of their information are, in the opinion of the district selectors, the most discreet and competent for the performance of the duties of jurors. R.S.O. 1937, c. 108, s. 42 (6-8).

JURY PROCESS

43.—(1) The judges of the Supreme Court, or one or more Judges to issue precepts to the sheriffs. of them for the holding of any sittings of the Supreme Court, and the judge of the county court, for the holding of any sittings of the county court or of the court of general sessions of the peace may respectively issue precepts (Form 1, Schedule D) to the sheriff for the return of a proper number of grand jurors for such sittings, and of such number of petit jurors as the county selectors have determined as the number to be drafted and returned or such greater or lesser number as in their or his opinion is required.

(2) The precepts for the return of grand jurors shall Number of grand jurors. command the return, and the panel shall consist of 13 grand jurors.

(3) Where a grand jury has been discharged, any judge Summoning members of grand jury. presiding at the sittings of the court for which such grand jury was summoned may, during the continuance of the sittings, upon the request of the Crown attorney or counsel appearing for the Attorney-General, direct the sheriff to resummon the members of such grand jury to re-attend at the

sittings at such time as he may determine, and where all of the grand jurors do not appear, section 68 shall apply. R.S.O. 1937, c. 108, s. 43.

Inspection of institutions.

44.—(1) The judge presiding at a jury sittings of the Supreme Court and at a sittings of the court of general sessions of the peace shall instruct the grand jury that it may inspect all or any of the institutions within the county or district which are maintained in whole or in part by public moneys, and every grand jury which makes such an inspection shall prepare a report or presentment indicating the conditions found to be existing in each of the institutions inspected; provided that where such an inspection has been conducted within the county or district within six months prior to the date of the commencement of such sittings, no inspection shall be made without the specific consent of the judge.

Amount of time to be spent in inspection.

(2) The time which may be devoted by a grand jury to the inspection of institutions shall be subject to the control and direction of the presiding judge. R.S.O. 1937, c. 108, s. 44.

Postponement of summons to jurors.

45.—(1) The Crown attorney may direct the sheriff to summon the petit jury for any of the sittings of the Supreme Court, county court, or court of general sessions of the peace on any day after the day upon which the court is scheduled to open at such hour as he may determine where in the circumstances he deems it advisable to do so; and such direction shall be given in writing at least six days before the day upon which the sittings is to be commenced. R.S.O. 1937, c. 108, s. 45 (1); 1942, c. 23, s. 1 (1).

Sheriff's notice to petit jurors.

(2) Where the sheriff has received such a direction from the Crown attorney and the jurors have already been summoned he shall forthwith by registered letter (Form 2, Schedule D) notify each person summoned to serve as a jurymen to attend the court on the day and at the hour mentioned in the direction and that his attendance is not required on the day named in the summons, and in case any person, after receiving the notice, attends the court on a day prior to that mentioned in the notice he shall not be entitled to receive any fees or mileage for such attendance. R.S.O. 1937, c. 108, s. 45 (2); 1942, c. 23, s. 1 (2).

Where juror attends owing to non-receipt of notice.

(3) Where, after the giving of such notice, a jurymen attends the sittings of the court on the opening day and the sheriff is satisfied that the notice was not received prior to such attendance and that the jurymen attended in good faith, believing such attendance to be necessary, the sheriff shall

allow the juryman his mileage and fees. R.S.O. 1937, c. 108, s. 45 (3).

46.—(1) The judge of the county court, if after the issue of the precept it appears to him expedient, may at any time prior to the day appointed for the sittings of the Supreme Court, by order under his hand and seal, and the judge assigned to hold the sittings or the presiding judge may, at any time before or during the sittings of such court, by order under his hand and seal, direct the sheriff to return an additional number of petit jurors.

Judge of county court may order additional petit jurors for Supreme Court sittings.

(2) The judge of the county court, after the issue of the precept, at any time prior to or during the sittings of the county court or court of general sessions of the peace, by order under his hand and seal, may direct the sheriff to return an additional number of petit jurors.

Additional petit jurors for inferior courts.

(3) The sheriff, upon the receipt of any such order, shall forthwith draft such additional number of jurors in the manner provided by this Act, and shall add their names to the panel, and shall forthwith thereafter summon them. R.S.O. 1937, c. 108, s. 46.

Duty of sheriff as to drafting additional number of jurors.

47.—(1) The judge presiding at a jury sittings of the Supreme Court, or of the county court, may at any time during the continuance of the sittings release any number of jurors from further service until resummoned by direction of the judge.

Release of jurors by judge.

(2) Where any number of jurors are to be released from further service under this section, the judge shall, in the presence of the jury panel and in open court, so advise the clerk of the court, who shall place all the cards upon which the names of the jurors are written in the box provided for that purpose and shall cause it to be thoroughly shaken and shall then withdraw from the box, one at a time, the number of cards equivalent to the number of jurors who are to be released, and the jurors whose names appear on the cards shall thereupon be released by the judge.

Selection of jurors to be released.

(3) Where jurors have been released under this section, the trial of any person charged with an indictable offence shall not be commenced at the sittings of the court unless such jurors have been summoned to re-attend at such sittings on or before the date upon which any such trial is commenced, or unless a new panel of jurors has been summoned to attend such sittings returnable on or before such date.

Trial of person charged with indictable offence.

Fees.

(4) Where jurors are released under this section they shall not be entitled to receive the fees provided by this Act during the period of release. R.S.O. 1937, c. 108, s. 47.

Precepts to be sent to sheriffs.

48. The proper officer in the office of the Registrar of the Supreme Court at Osgoode Hall, Toronto, shall procure the precepts for the return of panels of grand and petit jurors required for the sittings of the Supreme Court, and transmit the same to the sheriffs as soon as conveniently may be after the day has been appointed for the sittings for which the jurors are required. R.S.O. 1937, c. 108, s. 48.

When same panels for general sessions and county courts.

49. Where the same day is appointed for holding the court of general sessions of the peace and the sittings of the county court, the sheriff may return the same panel to the precepts for the panels of petit jurors. R.S.O. 1937, c. 108, s. 49.

Two or more sets of petit jurors.

50.—(1) Where a judge of the Supreme Court deems it necessary to have two or more sets of petit jurors to serve at any sittings of the Supreme Court he may direct the sheriff to return such number of petit jurors as he may think fit, not exceeding,

(a) in the county of York, 500;

(b) in the county of Wentworth, 216; and

(c) in any other county, 144,

and the judge shall fix and direct the number of sets and the day for which each set shall be summoned. 1947, c. 52, s. 1.

Sheriff to divide jurors into sets.

(2) The sheriff shall divide such jurors into as many sets as may be directed, and shall in the summons to every juror specify at what time his attendance will be required.

Each set a separate panel.

(3) Each set shall for all purposes be deemed a separate panel. R.S.O. 1937, c. 108, s. 50 (2, 3).

The Supreme Court may issue precepts as heretofore.

51. Subject to this Act, the Supreme Court and the judges thereof shall have the same power and authority as heretofore in issuing any precept, or in making any award or order, orally or otherwise, for the return of a jury for the trial of any issue before the court, or for amending or enlarging the panel of jurors returned for the trial of any such issue, and the return to any precept, award or order shall be made in the manner heretofore used and accustomed, and the jurors shall, as heretofore, be returned from the body of the county, and

shall be qualified according to this Act. R.S.O. 1937, c. 108, s. 51.

52. The provisions of this Act respecting the issue of precepts for the return of a panel of grand jurors for the sittings of the Supreme Court, as well as for the execution and return of the precepts, with all things touching the same, shall in all particulars be observed and followed with respect to the sittings of the court of general sessions of the peace. R.S.O. 1937, c. 108, s. 52.

The directions for precepts, at sittings of Supreme Court to apply to general sessions.

53. The provisions of this Act respecting the issue of precepts for the return of a general panel of petit jurors for the sittings of the Supreme Court, as well as for the execution and return of the precepts, with all things touching the same, shall be observed and followed in all particulars with respect to the sittings of the several county courts, except that the number of petit jurors to be summoned in the county of York shall not exceed 288. R.S.O. 1937, c. 108, s. 53.

And county courts.

DRAFTING PANELS FROM JURY LISTS

54. Every sheriff to whom a precept for the return of jurors is directed shall, to such precept, return a panel of the names of the jurors contained in the proper jury list, whose names shall be drafted from such list in the manner hereinafter mentioned. R.S.O. 1937, c. 108, s. 55.

How sheriffs to draft panels of jurors.

55. Where there is no jurors' book for the year or certified copy thereof in existence, the sheriff may return a panel of jurors drafted from the proper jury list in the jurors' book of the nearest preceding year for which there is a jurors' book or certified copy thereof in existence. R.S.O. 1937, c. 108, s. 56.

If no jurors' book for the year.

56. Where there are no jurors, or not a sufficient number upon the jury list, the sheriff may return to the precept a panel of jurors drafted, or the residue of whom have been drafted from the proper jury list in the jurors' book of the nearest preceding year for which there is a jurors' book or certified copy thereof in existence. R.S.O. 1937, c. 108, s. 57.

If not a sufficient number on the lists.

57. Upon receipt of the precept the sheriff shall post up in his office, and also on the door of the court house of the county, or if there is no court house, then in some other public place, written notice of the day and hour at which he will attend at the office of the clerk of the peace to draft such panel of jurors, and at such time and place he shall

Sheriff to give notice and draft panel.

proceed to draft the panel by ballot from the jury list in the presence of the clerk of the peace and any two justices of the peace of the county, who, upon reasonable notice from the sheriff, are hereby required to attend, and for such services the justices shall each receive the sum of \$1 for each of such panels drafted, which sums shall be paid by the treasurer of the county, on receipt of the sheriff's certificate that the service has been performed. R.S.O. 1937, c. 108, s. 58.

Notice to be
eight days if
time admits.

58. If the sheriff has sufficient time he shall post up such notice at least eight days before the drafting of the panel, and if there is not sufficient time he shall post up the notice forthwith upon receipt of the precept. R.S.O. 1937, c. 108, s. 59 (1).

If drafting
not
completed.

59. If the drafting or completing of the panel at the time appointed is prevented by unavoidable accident the same may be subsequently done or completed upon similar notices being first given. R.S.O. 1937, c. 108, s. 59 (2).

How sheriff
to prepare a
panel.

60.—(1) Before proceeding to draft a panel of jurors from a jury list the sheriff shall prepare a proper title or heading for the panel of jurors to be returned, to which he shall fix an appropriate number according as such panel by the jurors' book appears to be the first, second, third or subsequent panel drafted from such jury list, and the title or heading shall set forth in words at length the number of jurors to be returned.

Ballots for
drafting
panel.

(2) The sheriff shall then append to such title or heading a list of numbers from "1" forward to the number required, and shall prepare a set of ballot papers of uniform and convenient size containing the same number of ballot papers as there are numbers on the jury list, allowing one number to each ballot paper, which number shall be printed or written on the same, and he shall then proceed to draft the panel of jurors. R.S.O. 1937, c. 108, s. 60.

How panel
of jurors to
be drafted.

61. The manner of drafting the panel shall be as follows:

1. The sheriff shall place the ballot papers in a box or urn, and shall cause it to be shaken so as sufficiently to mix the ballot papers, and he shall then openly draw from the box or urn indiscriminately one of the ballot papers, and declare openly the number on such ballot paper, whereupon the clerk of the peace, or one of the justices of the peace shall immediately declare aloud the name of the person opposite whose name the corresponding number is placed on the jury list.

2. If such person is exempt from being drafted or from serving upon such panel under section 3, or if upon the face of such jury list it appears that the person whose number has been so drafted has previously been drafted to serve on a panel drafted from such jury list in obedience to a precept for the return of a general panel for any sittings of the Supreme Court, the court of general sessions of the peace, or county court, and that such person has actually attended and served upon such panel, and a sufficient number of names to complete the panel then in course of being drafted, remains on the jury list without taking any of those who have been so previously drafted, the sheriff shall publicly announce the fact of such exemption or previous service, and that the name of the person so drafted is, for that reason, not inserted in the panel.
3. If no such cause appears for omitting the name of such person from the panel, the name and addition of the person whose name has been so drafted shall be thereupon written down, and shall be marked by the sheriff on such jury list, with a reference to the number which will belong to such panel in the jurors' book.
4. The sheriff shall then proceed in like manner to draft and dispose of other numbers from the box or urn, until the necessary number for the panel has been completed.
5. The names of the persons so drafted, arranged alphabetically, with their places of residence and additions shall then be transcribed by the sheriff upon another sheet of paper, with a reference to the number of each name on the jury list, and each name shall be thereupon marked by him or by his deputy upon the jury list book, with a reference to the number which belongs to such name in the panel in the jurors' book.
6. The panel so alphabetically arranged and numbered, with a short statement of the precept in obedience to which it has been drafted, the date and place of such drafting, and the names of the sheriff, or his deputy, and of the clerk of the peace and justices of the peace, present at such drafting, or of at least two of them, shall then be entered in the juror's book, and attested by the signatures of the sheriff, or his deputy, and of the clerk of the peace and the justices, or at least two of them. R.S.O. 1937, c. 108, s. 61.

Copies of panel to be transmitted.

62. The sheriff shall, upon his return to the precept, annex thereto a panel containing the names, places of abode, and additions of the persons so drafted, and shall transmit one copy thereof to the clerk of the peace, and another to the office of the Registrar of the Supreme Court at Osgoode Hall, Toronto, or to the local registrar, or to the clerk of the county court, as the case may be. R.S.O. 1937, c. 108, s. 62.

Secrecy of jurors' book and panel.

63.—(1) The jurors' book and every list containing the names of the jury drafted for any panel shall be kept under lock and key by the sheriff and every officer mentioned in section 62 having a copy thereof, and except in so far as may be necessary in order to prepare the lists of the panel, and serve the jury summons, and except as provided in subsection 2, shall not be disclosed by the sheriff, his deputy, officer, clerk, or by any officer mentioned in section 62, or by any other person, until ten days before the sittings of the court for which the panel has been drafted, and during such period of ten days the sheriff, or his deputy, and any officer mentioned in section 62 having a copy of the panel shall permit the inspection at all reasonable hours of the jurors' book and of the panel or copy thereof in his custody by litigants or accused persons or their solicitors and shall furnish the litigants or accused persons or their solicitors upon request, and payment of a fee of \$2, a copy of any such panel.

When examination of panel may be permitted.

(2) A party to a cause may obtain from the sheriff or any other officer mentioned in section 62 having a copy of any panel, leave to examine the jurors' book or the panel upon filing with the sheriff or such other officer an affidavit made by himself or by his solicitor, stating that an examination of the jurors' book or panel is necessary to determine whether a special jury shall be struck in the cause, and that the examination is not desired and will not be used for any other purpose, and upon also filing with the sheriff or such other officer the consent of the judge of the county court obtained on such material as he may deem sufficient. R.S.O. 1937, c. 108, s. 63.

SUMMONING JURORS

Jurors to be summoned 10 or 15 days before attendance required.

64.—(1) The sheriff shall summon every person drafted to serve on grand juries or petit juries, not being special juries, by sending to him by registered mail a notice in writing (Form 3, Schedule D) under the hand of the sheriff, at least 10 days in the case of a county and at least 15 days in the case of a provisional judicial district before the day upon which the person is to attend, but when the sheriff is directed to draft and summon additional jurors under this Act, such 10 or 15 days service, as the case may be, shall not be necessary. 1942, c. 23, s. 2 (1).

(2) Subject, in the case of an action in the Supreme Court, to any order made by a judge of that court, and in the case of an action in the county court, to any order made by a judge of the county court, actions to be tried by a jury whether in the Supreme Court or the county court, shall be entered for trial not later than six clear days before the first day of the sittings, provided that no order extending the time shall be made after the notice provided for by subsection 5 has been given by the sheriff to the jurors. When actions to be entered for trial.

(3) Where there is no business requiring the attendance of a jury at any sittings of the Supreme Court, or of any county court for the trial of actions with a jury, the local registrar or the clerk of the county court, as the case may be, at least five clear days before the day appointed for the sittings, shall give notice thereof in writing (Form 4, Schedule D), to the sheriff, and that the attendance of jurymen is not required. Counter-mandating jury summonses where no business for jury.

(4) A similar notice shall be given to the sheriff by the clerk of the peace in the case of a sittings of the Supreme Court for the trial of criminal prosecutions, or in case of the sittings of the court of general sessions of the peace in any county, when it appears that the attendance of jurymen at such sittings is not required. For criminal prosecutions or general sessions.

(5) Subject to subsection 8, the sheriff, upon receipt of such notice or notices, shall forthwith by registered letter or otherwise, as he may deem expedient, notify (Form 5, Schedule D) each person summoned to serve as a jurymen that his attendance at the sittings is not required, and in case any person so summoned attends after receiving such notice, he shall not be entitled to any fees or mileage for attendance. Notice to be given to juror.

(6) Where, after the giving of such notice, a jurymen so summoned attends the sittings and the sheriff is satisfied that the notice was not received prior to the attendance and that the jurymen attended in good faith, believing such attendance to be necessary, the sheriff shall allow the jurymen his mileage and fees. Where juror attends owing to non-receipt of notice.

(7) For sending every notice required by subsection 5 there shall be paid to the sheriff in the same manner and out of the same funds as the fees for the summoning of jurors the sum of 25 cents, and necessary disbursements paid by him for each jurymen so notified. Fees of sheriff for sending notices.

(8) In the case of a sittings of the Supreme Court for the trial of criminal matters and proceedings, or in the case of a sittings of the court of general sessions of the peace, the sheriff shall not give the notice mentioned in subsection 5 Sheriff must ascertain that there are no prisoners in custody

unless he is satisfied that there is no prisoner in the common jail awaiting trial at the sittings. R.S.O. 1937, c. 108, s. 64 (2-8).

Special jurors
to be sum-
moned three
days before
attendance
required.

65. The sheriff shall summon every person drafted to serve on a special jury, in the like manner, three days at the least before the day on which the special juror is to attend. R.S.O. 1937, c. 108, s. 65.

Proper officer
to summon
jurors when-
ever
required.

66. Notwithstanding anything in this Act, the proper officer shall summon, in the manner heretofore used and accustomed, every person required to serve upon any inquest or inquiry before a coroner, or before any commissioners appointed under the Great Seal, or under the seal of the Supreme Court, or to serve as a talesman upon any jury. R.S.O. 1937, c. 108, s. 66.

Sheriff
indemnified
for returning
unqualified
persons, if
in the rolls
of jurors.

67. Every sheriff shall be indemnified for empanelling and returning as a grand or petit juror any person named in or taken from the grand or petit jurors' rolls for the year in which he is summoned, although the person may not be qualified or liable to serve as a juror for such year. R.S.O. 1937, c. 108, s. 67.

EMPANELLING THE GRAND JURY

If sufficient
grand jurors
do not
appear.

68. Where there do not appear as many as thirteen of the grand jurors summoned upon a panel returned upon any precept to any court of criminal jurisdiction, the court, upon the request of the Attorney-General, or of counsel for the Crown, or of the Crown attorney, may command the sheriff to name and appoint so many persons then present or who can be found, whether on the panel of petit jurors or not, as will make up a grand inquest of 13, and the sheriff shall return such persons to serve on such grand inquest, and shall add their names to the panel returned upon such precept, and the court shall proceed with those grand jurors who were before empanelled, together with the talesmen so newly added, as if all such jurors had been originally returned upon such precept. R.S.O. 1937, c. 108, s. 68.

DRAWING JURY AT TRIAL

Empanelling
petit jury at
the trial.

69. The name of every person summoned and empanelled as a petit juror upon the general precept for any sittings of the Supreme Court, the court of general sessions of the peace,

or county court, with his place of abode and addition, shall be written distinctly by the sheriff on a card or paper, as nearly as may be of the form and size following, viz.:

<p>DAVID BOOTH,</p> <p>of Lot No. 11, in the 7th Con. of Albion,</p> <p>MERCHANT.</p>

and the names so written shall, under the direction of the sheriff, be put together in a box or urn to be provided by him for that purpose, and he shall deliver the same to the clerk of the court. R.S.O. 1937, c. 108, s. 69.

70.—(1) Where an issue is brought on to be tried, or damages are to be assessed by a jury, the clerk shall, in open court, cause the box or urn to be shaken so as sufficiently to mix the names, and shall then draw out twelve of the cards or papers, one after another, causing the box or urn to be shaken after the drawing of each name, and if any juror whose name is so drawn does not appear or is challenged and set aside, then such further number until 12 jurors are drawn, who do appear, and who, after all just causes of challenge allowed, remain as fair and indifferent, and the first 12 jurors so drawn, appearing and approved as indifferent, their names being noted in the minute book of the clerk of the court, shall be sworn, and shall be the jury to try the issue or to assess the damages.

How the clerk is to proceed to draw names.

(2) The cards or papers containing the names of persons so drawn and sworn shall be kept apart until the jury have given in their verdict, and the same has been recorded, or until the jury have been by consent of the parties, or by leave of the court, discharged, and shall then be returned to the box or urn, there to be kept with the other cards or papers remaining therein. R.S.O. 1937, c. 108, s. 70.

Names drawn to be kept apart, etc.

71. If an issue is brought on to be tried, or damages are to be assessed, at any such sittings before the jury in any other cause have brought in their verdict, or been discharged, the court may order 12 of the residue of the cards or papers to be drawn for the trial of the issue so brought on to be tried, or for the assessment of damages, as the case may be. R.S.O. 1937, c. 108, s. 71,

If another jury is required before the last drawn have brought in their verdict,

Several causes may be tried in succession by the same jury.

72. Notwithstanding sections 70 and 71, where no objection is made on the part of the King, or any other party, the court may try any issue or assess damages with the jury previously drawn to try any other issue, or to assess damages, without the cards or papers containing their names being returned to the box or urn and redrawn, or may order that any of the jurors whom both parties consent to withdraw, or who may be justly challenged or excused by the court, shall retire and may cause another name or other names to be drawn from the box or urn, and shall try the issue or assess the damages with the residue of the original jury, and the new jurors who appear and are approved as indifferent. R.S.O. 1937, c. 108, s. 72.

If a full jury do not appear a *tales* may be granted.

73.—(1) Where a full jury does not appear at a sittings of the Supreme Court, or at a sittings of the county court or of the court of general sessions of the peace, or where, after the appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, the court may command the sheriff to name and appoint so many of such other able men of the county then present, or who can be found, as will make up a full jury, and the sheriff shall return such persons to serve on the jury.

Adding names of talesmen.

(2) Where a full jury does not appear, the names of the persons so returned shall be added to the panel returned upon the precept. R.S.O. 1937, c. 108, s. 73.

ENTRY OF SERVICE OF JURORS

The sheriff to note on lists names of jurors who do not serve.

74. Immediately after the sittings of the Supreme Court and of the court of general sessions of the peace, and of the county court, the sheriff shall note on the jury list from which the panel of grand jurors, if any, returned to the sittings was drafted, and on the jury list from which the panel of petit jurors was drafted, opposite the names of the jurors, the non-attendance or default of every juror who has not attended until discharged by the court. R.S.O. 1937, c. 108, s. 74.

CHALLENGES

Lack of qualification.

75. If any person not qualified is drawn as a juror for the trial of any issue in any matter or proceeding, the want of qualification shall be a good cause of challenge; but the want of a sufficient property qualification shall not be a good cause of challenge, nor a cause for discharging the juror upon his own application. R.S.O. 1937, c. 108, s. 75.

Peremptory challenges in civil cases.

76. In any cause, the plaintiff or plaintiffs, on one side, and the defendant or defendants, on the other, may challenge peremptorily any four of the jurors drawn to serve on the

trial, and such right of challenge shall extend to the King, when a party. R.S.O. 1937, c. 108, s. 76.

77. Sections 75 and 76 shall not apply to special jurors. Not to apply to special jurors.
R.S.O. 1937, c. 108, s. 77.

78. In a matter or proceeding to which a municipal corporation other than a county is a party, every ratepayer, and every officer or servant of the corporation shall, for that reason, be liable to challenge as a juror. R.S.O. 1937, c. 108, s. 78. Ratepayers, officers, etc., of corporation may be challenged.

SPECIAL JURIES

79.—(1) In any case whatever, whether civil or criminal, triable by a jury excepting only indictments for treason or felony, His Majesty or any prosecutor, relator or plaintiff or any defendant may have the issues joined tried by a special jury upon procuring the special jury to be struck and summoned for the day on which the trial of the case is to be had, and the jury so struck shall be the jury returned for the trial of the issues. Either party may strike a special jury.

(2) The party desiring the special jury shall give notice in writing thereof to the opposite party, after the close of the pleadings and at least eight days before the first day of the sittings at which the case is to be tried. Notice to opposite party.

(3) Upon the application of any party the court or a judge may at any time make an order for a special jury upon such terms as to costs and otherwise as may be deemed just. Order for special jury.

(4) Where notice has been given to try by special jury, either party may, at least six days before the first day of the sittings at which the case is to be tried, give notice to the sheriff that the case is to be tried by a special jury, and if the notice is not given a special jury need not be struck or summoned, and the case may be tried by a common jury, unless otherwise ordered by the court or a judge. Notice to sheriff.

(5) The sheriff shall thereupon, in writing, appoint some convenient day and hour for striking the special jury, sufficiently distant to enable the party requiring the special jury to give notice to the opposite party, and the party requiring the same shall serve a copy of the appointment upon the opposite party or his solicitor four clear days before the day so appointed, and in default thereof the sheriff shall not proceed to strike the special jury. Appointment for striking special jury.

(6) If a party does not attend, in person or by solicitor, at the striking of the special jury, the sheriff, upon proof of service of the appointment, and after waiting half an hour How to proceed if either party fails to attend.

for the absent party, shall, if requested by the other party, or his solicitor, proceed to strike the special jury, and in case of the continued absence of the first-mentioned party, the sheriff shall, on his behalf, strike off the list the 12 names which such party is entitled to strike off the list as hereinafter provided. R.S.O. 1937, c. 108, s. 79.

Qualifica-
tions of
special jurors.

80. A special jury shall, except as hereinafter provided, consist of persons whose names appear on the roll of grand jurors for the Supreme Court or on the roll of grand jurors for the inferior courts for the year in which the notice to the sheriff is given. R.S.O. 1937, c. 108, s. 80.

How a
special jury
is to be
struck.

81. A special jury shall be struck in the following manner:

1. The sheriff shall provide as many ballot papers of uniform and convenient size as there are names on the two grand jurors' rolls from which the special jury is to be struck, and the whole of the numbers on the grand jurors' rolls shall be printed or written upon the ballot papers respectively, allowing one number to each ballot paper, and distinguishing each number by the letters S.C. or I.C., according as it belongs to the roll of grand jurors for the Supreme Court, or to the roll of grand jurors for the inferior courts.
2. At the office of the clerk of the peace, at the time appointed, in the presence of the parties or their solicitors or such of them as attend, the sheriff shall put all the ballot papers in a box or urn, and after having caused it to be shaken so as to mix the ballot papers sufficiently, he shall openly draw from the box or urn 40 of the numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the grand jurors' roll to which the ballot paper belongs, and read aloud the name to which the number is appended in the roll.
3. If, at the time of reading a name, either party, or his solicitor, objects that the person whose name has been drawn is disqualified or incapacitated from serving on the jury, and proves the same to the satisfaction of the sheriff, the name shall be set aside, and the sheriff shall instead thereof openly draw another ballot paper, and shall in like manner refer to the corresponding number in the grand jurors' roll to which the ballot paper belongs, and read aloud the name to which the number is appended in the roll, and such name may be in like manner set aside, and other names may be

drawn according to the mode of proceeding herein-before prescribed for the purpose of supplying names in the places of those set aside until the whole number of 40 names not liable to be set aside is completed.

4. Where 40 names cannot be obtained from the grand jurors' rolls, the sheriff shall, in like manner, from the grand jurors' rolls in the jurors' book of the nearest year for which there is a jurors' book or a certified copy thereof in the office of the clerk of the peace, select by ballot, in addition to those already taken from the first-mentioned grand jurors' rolls, the number of names required to make up the full number of 40 names.
5. The sheriff shall thereupon make a list of the 40 names, together with the places of abode and additions of the persons selected, from which list, after a reasonable time allowed in the discretion of the sheriff for inquiry and consideration respecting the same, each party, or his solicitor, shall strike off 12 names, the names being so struck off by the parties, one by one alternately, the party who has given the notice to the sheriff commencing.
6. The sheriff shall summon to appear on the day appointed for the trial of the case and shall return upon the notice served upon him for the special jury the sixteen persons whose names remain upon the list, and shall file the notice and return with the clerk of the court before which the trial is to take place.
7. From the 16 persons, or so many of them as appear in obedience to the summons, a special jury for the trial of the case shall be drawn in the manner prescribed by section 70 for the drawing of petit jurors. R.S.O. 1937, c. 108, s. 81.

82. Immediately after the striking of the special jury the sheriff shall certify the sum required to pay for the attendance of the jurors for three days, and the allowance for mileage and sheriff's fees; and the party who has given the notice requiring the special jury, or if he has made default in attending to strike the special jury, then the party who has requested the sheriff to proceed under subsection 6 of section 79, shall forthwith deposit with the sheriff the sum so certified as sufficient to pay the expenses as aforesaid, but nothing herein contained shall limit the payment required to be made to the jurors to the sum so deposited. R.S.O. 1937, c. 108, s. 82.

Party
requiring
special jury
to deposit
expenses of
jury with
sheriff.

Same jury-
men not to
be returned
or sit on
new trial.

83. In the event of a new trial being ordered after the verdict of a special jury, the notice to the sheriff mentioned in subsection 4 of section 79 shall set forth the names of the jurors who sat on the first trial, or if more trials than one have been previously had, the names of all the jurors who so sat upon any of such trials, and none of the jurors who sat upon a former trial shall be returned or sit as jurors upon any subsequent trial of the same case. R.S.O. 1937, c. 108, s. 83.

In special
jury cases
talesmen to
be taken
from the
general
panel.

84. Where a special jury has been struck the talesmen, if any be required, shall be selected from the jurors empanelled upon the petit jury panel to serve at the same court if a sufficient number can be found, and the King and every party shall have and may exercise their respective challenges to the talesmen so added. R.S.O. 1937, c. 108, s. 84.

The party
who gives
notice for
the jury to
pay fees of
striking, etc.

85. The party who gives notice to the sheriff for a special jury, or the party who upon his default has requested the sheriff to proceed under subsection 6 of section 79 shall pay the fees for striking the special jury, the fees of the jurors and all the expenses occasioned by the trial by the special jury, and shall not have any further or other allowance for the same upon taxation of costs than if the case had been tried by a common jury, unless the trial judge certifies in open court, immediately after the verdict, or afterwards upon notice at chambers, that the case was proper to be tried by a special jury. R.S.O. 1937, c. 108, s. 85.

Costs where
special jury
summoned
but cause
not tried.

86. If a case in which a special jury has been summoned is not tried, the party who required the special jury shall not have any further or other allowance for the same, upon taxation of costs, than if the jury had not been summoned, unless a judge, upon notice to the opposite party, certifies that the case was proper to be tried by a special jury. R.S.O. 1937, c. 108, s. 86.

VIEW BY JURORS

View by
jurors.

87.—(1) Where in an action, whether the same is to be tried by a special or by a common jury, it appears to the presiding judge that in order to understand better the evidence the jurors who are to try the issues ought to have a view of the place or of the real or personal property in question, whether the same be within or without the county in which the trial is to take place, he may at any time after the jurors have been sworn and before they give their verdict order that the jurors shall have such view.

Terms of
order.

(2) The order may be made on such terms as to costs and the adjournment of the trial and otherwise as may be deemed

just, and shall contain directions to the sheriff as to the manner in which and the persons by whom the place or the property in question shall be shown to the jurors and any other directions which under the circumstances the judge may think proper. R.S.O. 1937, c. 108, s. 87.

MISCELLANEOUS

88. The omission to observe any of the provisions of this Act as respects the qualification, selection, balloting and distribution of jurors, the preparation of the jurors' book, the selecting of jury lists from the jurors' rolls, the drafting of panels from the jury lists, or the striking of special juries shall not be a ground of impeaching the verdict or judgment in any action. R.S.O. 1937, c. 108, s. 88.

Omissions to observe this Act not to vitiate the verdict.

89.—(1) No person shall be liable to be summoned or empanelled to serve as a juror upon any inquest or inquiry to be taken or made by or before any commissioners appointed under the Great Seal, or the seal of any court having general jurisdiction throughout Ontario or throughout any county, unless the name of the person appears upon the jurors' rolls for the year in which the person is called upon to serve on the inquest or inquiry.

No person to be summoned whose name is not on the roll of jurors.

(2) This section shall not extend to an inquest to be taken by or before a coroner, by virtue of his office, or to an inquest or inquiry to be taken or made by or before a sheriff, coroner, or bailiff. R.S.O. 1937, c. 108, s. 89.

Exception: coroners' juries, etc.

FEES

90.—(1) Every grand juror actually attending a sittings of the Supreme Court or of the court of general sessions of the peace, and every petit juror actually attending a sittings of the Supreme Court or of the court of general sessions of the peace or a county court shall be entitled to receive the sum of \$6 per day for every day on which he was necessarily absent from his place of residence for the purpose of attending the court, and the sum of 15 cents for every mile he necessarily travelled from his place of residence to the court. R.S.O. 1937, c. 108, s. 91 (1); 1947, c. 52, s. 2 (1).

Jurors' fees and mileage.

(2) The distance travelled shall be ascertained by the declaration of the sheriff's bailiff who summoned the juror or by the declaration of the juror himself; but every juror who makes a false declaration respecting such distance shall forfeit his right to receive any payment for travelling to or attending the court as a juror.

How ascertained.

Jurors attending on Saturdays and Mondays.

(3) Where a grand or petit juror who does not reside in the county town actually attends the sittings of the court as such juror on Saturday and on the Monday following, he shall be entitled to be paid for the intervening Sunday.

When jurors may be paid although attendance not required.

(4) Where petit jurors are in attendance at the court and are informed by the presiding judge that their attendance will not be required for one or more days, or where a grand jury adjourns for a period of one or more days, the jurors shall be paid for the first and second days of such period during which they are absent, but jurors who reside in the county town shall not be entitled to be paid for a Sunday.

Mileage in lieu of pay.

(5) In lieu of such pay for Sundays or other days mentioned in subsections 3 and 4, the juror may have mileage for going to and returning from his place of residence if there is a by-law of the county council authorizing such mileage. R.S.O. 1937, c. 108, s. 91 (2-5).

Sheriff to make a pay list for petit jurors.

91.—(1) The sheriff shall make a pay list (Schedule C) for the petit jurors and shall attend or cause some officer to attend at the opening of the court on every day on which the court sits for the trial of actions by jury, and upon the petit jurors being called, shall check and mark the word "present" or "absent", as the case may be, in the proper column of the list opposite the name of every juror, and on the last day of the sittings of the court shall certify and return the pay list to the treasurer of the county, and the treasurer shall forthwith pay to every petit juror the sum to which he appears by the list to be entitled.

County court and general sessions to be deemed one court.

(2) The county court and the court of general sessions of the peace shall for the purposes of this section be deemed to be one court, and the duty of calling the jurors at the opening of the court shall be performed by the clerk of whichever court is first opened. R.S.O. 1937, c. 108, s. 92.

Allowance to sheriffs.

92.—(1) The sheriff shall be entitled to receive from the treasurer of the county such sum for the pay list and such sum per diem for checking and for certifying and returning the same to the treasurer as in the case of a county the county council by by-law determines, and in the case of a provisional judicial district as the Lieutenant-Governor in Council determines.

Sheriff's fee for checking panel and returning list.

(2) Where such sums have not been fixed under subsection 1, the sheriff shall be entitled to receive from the treasurer of the county or district \$1 per day for checking the jury panel and \$1 for certifying and returning the list to the treasurer. R.S.O. 1937, c. 108, s. 93.

93. The marshal or the clerk of the court, or the clerk of the peace, as the case may be, shall, at the opening of the court, and before any other business is proceeded with, call the names of the petit jurors, so that the sheriff or his officer may check off those who are present or absent. R.S.O. 1937, c. 108, s. 94. List of jurors to be called.

94. A petit juror not appearing when called shall not be entitled to pay for the day on which he makes default. R.S.O. 1937, c. 108, s. 95. Jurors not attending not to be paid.

95. Special jurors shall receive the same allowances and mileage as petit jurors are entitled to under section 90. R.S.O. 1937, c. 108, s. 96. Allowances to special jurors.

96.—(1) With every record entered for trial of issues or assessment of damages by a jury in the Supreme Court there shall be paid to the Registrar or the local registrar of the Supreme Court, as the case may be, the sum of \$3, and in the county court to the clerk of the county court the sum of \$1.50, and the record shall not be entered unless such sum is first paid. R.S.O. 1937, c. 108, s. 97 (1). Sums to be paid with record when entered for trial in jury cases.

(2) Subject to any agreement made between the corporation of the county and the corporation of the county town, such sum in the case of a county shall be forthwith paid over to the treasurer of the county, and shall form part of the fund for the payment of petit jurors, and in the case of a district shall be forthwith paid over to the treasurer of the district and shall form part of the Consolidated Revenue Fund. R.S.O. 1937, c. 108, s. 97 (2); 1939, c. 47, s. 14 (2). How to be dealt with.

97. All fines imposed upon jurors for non-attendance shall in the case of a county be paid to the treasurer of the county, and shall form part of the fund for the payment of petit jurors, and in the case of a district shall be paid to the treasurer of the district and shall form part of the Consolidated Revenue Fund. R.S.O. 1937, c. 108, s. 98. Certain fines to go towards payment of jurors.

98. If the sums appropriated by this Act are not sufficient to pay the petit jurors, the county council shall raise and appropriate such sum of money as will be sufficient to pay them. R.S.O. 1937, c. 108, s. 99. County councils to provide funds for paying jurors.

99. The local selectors for every selection and distribution of jurors, and the report thereof, shall be entitled to such sum as is authorized by the council of the municipality, and, upon receipt of a certificate from the clerk of the peace that the Fees to the local selectors.

report has been returned to him within the time fixed by this Act, such sum shall be paid to them by the treasurer of the municipality. R.S.O. 1937, c. 108, s. 100.

Fees of
county
selectors.

100.—(1) The county selectors shall be entitled to the sum of \$4 for each day's attendance in the performance of their duties under this Act, but when the number of grand and petit jurors to be selected does not exceed 500 no selector shall be entitled to be paid for a greater number of days than four.

Additional
fees.

(2) When the number to be selected exceeds 500, each selector actually attending shall be entitled to be paid as for one additional day for every 200 additional names selected, and no more.

Payment.

(3) Upon receipt of a certificate from the clerk of the peace that the duties required of the county selectors have been duly performed by them, such sum shall be paid by the treasurer of the county to every such selector, and the clerk of the peace shall be paid for his attendance at the meeting of the county selectors the same fees as a county selector. R.S.O. 1937, c. 108, s. 101.

Fees to clerks
of the peace.

101. The clerk of the peace shall be entitled to the following fees:

1. For receiving, examining and filing the reports of the local selectors for each municipality, and causing any deficiency found therein to be supplied..... \$.50
2. For giving certificates to selectors of jurors, of duties having been performed; but only one certificate for all the selectors for each municipality shall be given..... .50
3. For preparing and superintending the making up of each jurors' book (besides actual disbursements for stationer's charges). 3.00
4. For making up jurors' books, entering all the names and numbers, and all other matters required to be entered therein, per 100 names..... 2.00
5. For each copy of the jurors' book required by this Act, per 100 names..... 2.00
6. For each certificate required to be entered in the jurors' book.. 1.00
7. For copy of jury list required to be entered, per 100 names.. 2.00
8. For each panel of jurors drafted from the jury list, per 100 names on each jury list..... 2.00
9. For entering each panel in the jurors' book, with the numbers corresponding to the jury list..... 2.00
10. For making up aggregate return in detail of jurors..... 5.00
11. For copy thereof, and transmitting same to Provincial Secretary when required..... 2.00
12. For each office copy of the same..... 2.00

R.S.O. 1937, c. 108, s. 102

102. The sheriff, in addition to such fees as he may be entitled to from the parties to an action, shall be entitled to the following fees: Sheriff's fees.

1. For each panel of jurors, grand or petit, returned and summoned by him in obedience to any general precept..... \$5.00
2. For copies of such panel to be transmitted to the proper officers, each..... 2.00
3. For every summons served upon the jurors on any panel..... .50
4. For every mile which the sheriff or his deputy or bailiffs necessarily and actually travelled from the county town for the purpose of serving such summonses (such mileage to be allowed for going only and not for returning, and this item not to apply where such summonses are mailed as provided by this Act)..... .20
5. Advertising the drafting of jury panels (required by section 57). 2.00
6. Notices to clerk of the peace and justices (required by section 57), each..... .50
7. Attending to draft jury panels..... 5.00
8. Writing names of jurors on cards..... 4.00
9. For every notice to jury not to attend, section 64 (7)..... .25
10. Attending, locking up or feeding petit juries, or taking grand jurors to inspect institutions (exclusive of disbursements).
For each jury..... 4.00
11. For each daily checking of jury panel (section 92)..... 1.00
12. For certifying and returning list of jury panel to treasurer (section 92)..... 1.00
13. When sheriff acts as county selector of juries per diem (section 100)..... 4.00

R.S.O. 1937, c. 108, s. 103.

103. In the cases provided for by sections 100 and 101, where there are more than 100 or more than an even number of hundreds of such names, if the broken number beyond the hundred or hundreds falls short of 50 names, the same shall not be reckoned, and if the broken number amounts to 50 names or upwards, the same shall be reckoned as a full hundred, but in all cases of there being altogether less than a single hundred, the same shall be reckoned as a full hundred. If there are more than 100 names.
R.S.O. 1937, c. 108, s. 104.

104.—(1) Upon proof by affidavit of the services having been performed and upon the account being audited and an order of the board of audit being made for payment, the treasurer of the county shall pay to such officers the amount of their fees. How the fees shall be paid.

(2) In the case of a sheriff's account there shall be annexed to the affidavit a detailed statement showing the number of miles actually and necessarily travelled in effecting service of the summons on each juror, so that at the end of the Affidavits as to mileage.

journey upon which the services were made the officer summoning the jury shall be entitled to mileage only for the number of miles actually travelled. R.S.O. 1937, c. 108, s. 105.

PENALTIES

On jurors
for non-
attendance.

105. If a person, having been duly summoned to attend on a jury, does not attend in pursuance of the summons, or being there called does not answer to his name; or if a juror or talesman, after having been called, is present but does not appear, or after his appearance wilfully withdraws himself from the presence of the court, the court may impose such fine upon the juror or talesman as may be deemed proper. R.S.O. 1937, c. 108, s. 106.

On jurors
failing to
attend upon
inquests and
inquiries,
etc.

106.—(1) If a person having been duly summoned and returned to serve as a juror upon an inquest or inquiry before a sheriff or coroner, or before any of the commissioners mentioned in section 66, does not, after being openly called three times, appear and serve, the sheriff, coroner or commissioners may impose such fine, not exceeding \$20, upon the person so making default as may be deemed proper.

Sheriff to
certify
defaults and
transmit
copies.

(2) The sheriff, coroner or commissioners shall make out and sign a certificate containing the name, the residence and addition of every person so making default, together with the amount of the fine imposed and the cause of the fine, and transmit the certificate to the clerk of the peace for the county in which the defaulter resides, on or before the first day of the sittings of the court of general sessions of the peace next ensuing.

Fines to be
estreated.

(3) The clerk of the peace shall enter the fine so certified on the roll on which fines and forfeitures imposed at the court of general sessions are entered, and the same shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects as if it had been a fine imposed at a sittings of the court of general sessions of the peace. R.S.O. 1937, c. 108, s. 107.

On sheriffs,
etc., for
default to
perform
duties
assigned
to them.

107. If a sheriff wilfully empanels and returns to serve on a jury a person whose name has not been duly drawn upon the panel in the manner in this Act prescribed, or if a registrar, clerk of the peace, or other officer wilfully records the appearance of any person so summoned and returned who has not actually appeared, the court may, upon examination in a summary way, impose such fine upon the sheriff, clerk of assize, clerk of the peace, or other officer as may be deemed proper. R.S.O. 1937, c. 108, s. 108.

108. No sheriff or other officer or person shall, directly or indirectly, take or receive money or other reward or promise of money or reward, to excuse any person from serving or being summoned to serve as a juror, and no bailiff or other officer appointed by a sheriff to summon jurors shall summon or pretend to summon any person to serve as a juror other than those whose names are specified in a warrant or mandate signed by the sheriff and directed to the bailiff or other officer, and if a sheriff or other officer wilfully transgresses in any of such cases, the Supreme Court, the court of general sessions of the peace or county court within whose jurisdiction the offence has been committed may impose upon the person so offending such fine as may be deemed proper. R.S.O. 1937, c. 108, s. 109.

On sheriffs,
etc., taking
money as
a bribe.

109. Every person who,

On sheriffs,
etc., making
unauthorized
alterations
in jurors'
books, etc.

(a) being a sheriff or deputy sheriff, makes or causes to be made any alteration in any of the rolls, lists or panels in any jurors' book, or in the certified copies thereof in his official custody, except in compliance with the directions of this Act, or neglects or refuses to prepare the jurors' book, the ballot papers necessary for drafting the panels, striking special juries and drawing juries at the trial, or neglects or omits to return the jurors' book and the ballot papers for drafting the jury lists to the court to which he is required to return the same, or neglects or omits to perform any other duty required of him by this Act, or wilfully does anything inconsistent with this Act; or

(b) being a registrar or local registrar of the Supreme Court, makes or causes to be made any alteration in the rolls, lists or panels in any jurors' book, or in any copy thereof deposited in his office, or wilfully certifies as true any copy of a jurors' book, or any roll, list or panel therein, which is not a true copy thereof; or

On registrars
altering
lists, etc.

(c) being a clerk of a local municipality, or any assessment commissioner, assessor or other officer or person who, at the time of the annual meeting of the local selectors has the actual charge or custody of the assessment roll of the municipality for such year, neglects or omits to perform the duties required of him by section 16; or

On municipal
officers not
producing
assessment
rolls as
required.

(d) being a local selector, wilfully selects, ballots and reports as qualified and liable to serve as a grand or petit juror any person who, according to this Act, ought not to be so selected, balloted or reported, or takes money or other reward for selecting, balloting

On selectors
of jurors for
wilful dereliction
of duty.

or reporting, or omitting to select, ballot or report any person, or wilfully inserts in such report a wrong description of the name, place of abode, or addition of any person so selected, balloted and reported, or neglects or omits to complete his selection, ballot and report, and to deposit the same in the proper office on or before the 25th day of October of the year for which he acts as local selector; or

On clerks of peace for wilful dereliction of duty.

- (e) being a clerk of the peace, neglects or omits to perform any duty required of him in the manner herein prescribed, or wilfully does anything inconsistent with this Act,

shall for each offence forfeit the sum of \$200, one half of which shall be paid over to the treasurer of the county and shall form part of the fund for the payment of petit jurors, and the other half, with full costs, to any person who sues for the same in any court of competent jurisdiction; and every such action shall be tried by the judge without the intervention of a jury, and when the same has been commenced in the county court the judge of the county court shall, upon the application of either party thereto, by his order direct that the same shall be tried at a sittings of the Supreme Court, and the record may thereafter be entered and the action tried at such sittings. R.S.O. 1937, c. 108, s. 110.

Recovery of penalties.

Rev. Stat., c. 379.

110. All penalties under this Act, for which no other remedy is given, may be recovered under *The Summary Convictions Act*. R.S.O. 1937, c. 108, s. 111.

Tampering with jurors.

111.—(1) It shall be a contempt of court for any person interested in an action in any court, or his solicitor, counsel, agent or emissary, before or during the sittings of court at which the action is, or is to be, entered for trial or may be tried, or at any time after a juror has been summoned, knowingly, directly or indirectly to speak to or consult with a juror upon the jury panel for such court respecting such action, or any matter or thing relating thereto.

Barrister, solicitor or student to be disbarred or suspended.

(2) Where a solicitor or barrister or student at law or articulated clerk is guilty of such offence he may, in addition to any other penalty, be struck from the roll of solicitors or be disbarred or suspended from the practice of his profession for a limited time or his name may be erased from the list of the Law Society or removed therefrom for a limited time by the Supreme Court upon motion at the instance and in the name of the Attorney-General.

(3) This section shall not apply where a juror is also a party to or a known witness or interested in the action or is otherwise ineligible as a juror in the action, nor to anything which may properly take place in the course of the trial or conduct of the action. R.S.O. 1937, c. 108, s. 112.

Exception where juror is a party or witness.

GENERAL PROVISIONS

112. It shall be the duty of the sheriff at the sittings of the Supreme Court for trials by jury and the court of general sessions of the peace to post up in the court room and jury rooms and in the general entrance hall of the court house, printed copies in conspicuous type of section 180 of the *Criminal Code* (Canada). R.S.O. 1937, c. 108, s. 113.

Posting up copies of s. 180 of *Criminal Code*.

R.S.C. 1927, c. 36.

113. Nothing in this Act shall alter, abridge or affect any power or authority which any court or judge has, or any practice or form in regard to trials by jury, juries or jurors, except in those cases only where such power or authority, practice or form is repealed or altered, or is inconsistent with any of the provisions hereof. R.S.O. 1937, c. 108, s. 114.

Saving of former powers of court and judges except as altered.

SCHEDULE A

(Section 22)

REPORT OF LOCAL SELECTORS FROM ASSESSMENT ROLL

Report of the selection and distribution of jurors for the municipality of _____, in the County of _____, for the year 19____, made by _____, Mayor (or Reeve), and _____, Clerk, and by _____ and _____, Assessors (or by _____, Assessment Commissioner, and _____ and _____, Assessors, as the case may be), of the municipality, on the day of _____, 19____, pursuant to the directions of *The Jurors Act*. (See note 1.)

FIRST DIVISION

For the Roll of Grand Jurors to serve in the Supreme Court of Ontario

NAMES	No. of Lot or House, where known to the Selectors	Concession or Street, or Village or Hamlet, where known to the Selectors	OCCUPATIONS
John Anderson.....	16	2	Esquire
Peter Cameron.....	4	6	Yeoman
William O'Leary.....	..	Oatlands	Gentleman
Alfred Piper.....	17	1	Esquire
etc.			

SECOND DIVISION

*For the Roll of Grand Jurors to serve in His Majesty's Inferior Courts
of Criminal Jurisdiction*

NAMES	No. of Lot or House, where known to the Selectors	Concession or Street, or Village or Ham- let, where known to the Selectors	OCCUPATIONS
William Adams.....	9	4	Gentleman
Richard House.....	7	5	Yeoman
Allan Thomas.....	24	5	Esquire
Jacob Wyse.....	2	1	Tailor
etc.			

THIRD DIVISION

For the Roll of Petit Jurors to serve in the Supreme Court of Ontario

NAMES	No. of Lot or House, where known to the Selectors	Concession or Street, or Village or Ham- let, where known to the Selectors	OCCUPATIONS
David Boothe.....	11	7	Merchant
Henry Grace.....	..	7	Yeoman
Nathan Lowe.....	6	1	Shoemaker
George Sullivan.....	3	4	Esquire
etc.			

FOURTH DIVISION

For the Roll of Petit Jurors to serve in His Majesty's Inferior Courts of Criminal and Civil Jurisdiction

NAMES	No. of Lot or House, where known to the Selectors	Concession or Street, or Village or Ham- let, where known to the Selectors	OCCUPATIONS
William Carpenter.....	7	2	Esquire
George Gule.....	7	8	Tailor
Samuel Jones.....	15	3	Yeoman
Thomas Hoole Rogers....	11	1	Gentleman
etc.			

We, the above-named local Selectors for the Municipality of _____, solemnly declare, each for himself, that we have made the selection and distribution of Jurors in this Report from the proper lists of the municipality to the best of our judgment and information, pursuant to the directions of *The Jurors Act*, and that we have so made the same without fear, favour or affection of, to or for any person or persons whomsoever, gain, reward, or hope thereof, other than the fees to which we are entitled under the provisions of that Act.

Witness our hands and seals, the day and year last above written.

A. B. [L.S.] Mayor or Reeve.

C. D. [L.S.] Clerk.

E. F. [L.S.] Assessment Commissioner.

G. H. [L.S.] Assessor.

I. J. [L.S.] Assessor.

R.S.O. 1937, c. 108, Sched. A; 1939, c. 47, s. 14 (3).

SCHEDULE B

(Section 24)

JURORS' BOOK

The JURORS' BOOK for the County of _____, for the year 19 ____.

(See note 1.)

1.—ROLL OF GRAND JURORS

To serve in the Supreme Court of Ontario

(See note 2.)

No. on Roll	NAMES	No. of Lot or House	Concession or Street, or Village or Ham- let	OCCUPATIONS	No. on List	REMARKS
	1 KING (Township)					
1	Anderson, John...	16	..	Esquire		
2	Aylof, Graham...	19	4	Gentleman		
3	Bosworth, David.	11	7	Merchant		
4	Cameron, Peter...	4	6	Yeoman		
	(Etc., to, say)					
20	Young, David....	7	8	Tailor	3	
	2 MARKHAM (Township)					
21	Allan, Simon.....	21	7	Yeoman		
22	Bolland, George..	5	12	Gentleman	2	
	(Etc., to, say)					
31	Wilkinson, James.	13	4	Esquire		
32	Yates, Edward...	1	5	Yeoman	144	
	3 NEWMARKET (Town)					
	4 TORONTO (City)					
	26 YORK (Township)					
503	Arthur, Thomas..	3	2 from Bay	Yeoman	1	
504	Bull, Peter.....	14	1 E. Y'ge St.	Yeoman		

These are to certify that I have carefully compared the above Grand Jurors' Roll with the Reports made by the local Selectors for the municipalities in the County of _____, for the year 19 ____, as such Reports remained with me as Clerk of the Peace on the 25th day of October in that year, and that such Grand Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all

persons so selected and reported as competent, qualified and liable to serve as Grand Jurors for such county in the Supreme Court.

Witness my hand, this day of , 19 ,
E. F., Clerk of the Peace.

2.—THE GRAND JURY LIST

FOR the Supreme Court of Ontario (see note 2), as selected for the County of by the County Selectors, on , the day of , 19 , pursuant to the directions of *The Jurors Act*.

No. on list	NAMES	No. of Lot or House, as in Jurors' Roll	Concession or Street, or Village or Hamlet, as in Jurors' Roll	Municipality	Occupations	No. on Roll	No. of Panel	Remarks to be filled in by Sheriff, see s. 109.
1	Arthur, Thomas...	3	2 From Bay	York	Yeoman	503	1	
2	Bolland, George...	5	12	Markham	Gentleman	22	1	
3	Yates, Edward... (Etc., to, say)	7	8	King	Tailor	20		
144	Young, David....	1	5	Markham	Yeoman	32	1	

These are to certify that on , the day of , 19 , the foregoing Grand Jury List for the County of for the Supreme Court for the year 19 , was duly selected from the Roll of Grand Jurors to serve in the Supreme Court for the same year, pursuant to the directions of *The Jurors Act*.
Witness our hands this day of , 19 .

C. D., Chairman,
E. F., Clerk of the Peace.

3.—GRAND JURY PANELS FOR THE SUPREME COURT OF ONTARIO

(See note 2)

No. 1.

PANEL of Grand Jurors returned upon a Precept from the Honourable G. H., the Honourable I. J., (etc.) His Majesty's Justices in that behalf, tested the day of , 19 , for the return of thirteen of such Jurors for the sittings of the Supreme Court to be held for the County of , on the day of , 19 , as drafted on , the day of , 19 , at the office of the Clerk of the Peace in , by A.B., Esquire, Sheriff, in the presence of K. L. and M. N. Esquires, Justices of the Peace for the County, pursuant to the directions of *The Jurors Act*.

No. on Panel	NAMES	No. of Lot or House	Concession or Street, or Village or Ham- let	Municipality	Occupations	No. on Lists	Remarks
1	Arthur, Thomas	3	2 From Bay	York	Yeoman	1	
2	Bolland, George (<i>Etc., to, say</i>)	5	12	Mark- ham	Gentleman	2	
24	Yates, Edward.	1	5	Mark- ham	Yeoman	144	

Witness our hands, the day and year last above written.

A. B., Sheriff.

K. L., J. P.

M. N., J. P.

No. 2. (*See note 4*), etc.

4.—ROLL OF GRAND JURORS

To serve in His Majesty's Inferior Courts (*see note 2*)
of Criminal Jurisdiction. (*See note 3.*)

(*Continue as in Form 1, substituting in
the certificate for the words "Supreme
Court" the words "Inferior Courts of
Criminal Jurisdiction".*)

Witness my hand, this day of , 19 .
E. F., Clerk of the Peace.

5.—THE GRAND JURY LIST

FOR the Inferior Courts (*see note 2*), as selected by the
County Selectors, for the County of ,
on , the day of , 19 ,
pursuant to the directions of *The Jurors Act*.

(*Continue as in Form 2, substituting in
the certificate for the words "Supreme
Court" the words "Inferior Courts of
Criminal Jurisdiction".*)

Witness our hands, this day of , 19 .
C. D., Chairman,
E. F., Clerk of the Peace.

6.—GRAND JURY PANELS FOR THE INFERIOR COURTS

(*See note 2*)

No. 1.

PANEL of Grand Jurors returned upon a Precept from the Presiding Judge
of the Court of General Sessions of the Peace for the County or
District of , tested the day of , 19 , for the
return of thirteen of such Jurors for the Sittings of the Court of
General Sessions of the Peace, to be held, etc.

(*Continue as in Form 3.*)

7.—ROLL OF PETIT JURORS

To serve in the Supreme Court of Ontario. (See notes 2 and 3)

No. on Roll	NAMES	No. of Lot or House	Concession or Street, or Village or Ham- let	Occupations	No. on List	Remarks to be filled in by Sheriff, see s. 74.
	1 KING (Township)					
1	Adams, George...	16	2	Esquire		
2	Aikins, William...	21	7	Yeoman	2	
3	Alley, Simon....	25	3	Yeoman		
4	Ashford, Thomas.	19	5	Yeoman	3	
5	Barclay, John....	15	5	Gentleman	1	
6	Cameron, William	11	7	Merchant	5	
7	Daniels, George..	19	2	Shoemaker	4	
8	Parley, Peter....	4	6	Yeoman		
9	Small, William...	22	11	Yeoman	6	
10	Worth, David....	7	8	Tailor	7	
	(etc., to, say)					
1060	Yarrold, George..	14		Baker	288	
	2 MARKHAM (Township) etc.					

These are to certify that I have carefully compared the above Petit Jurors' Roll with the Reports made by the local Selectors for the municipalities in the County of _____, for the year 19____, as such Reports remained with me as Clerk of the Peace on the 25th day of October of that year, and that such Petit Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Petit Jurors for such county in the Supreme Court.

Witness my hand, this _____ day _____, 19____.

E. F., Clerk of the Peace.

8.—THE PETIT JURY LIST

FOR the Supreme Court of Ontario (*see note 2*), as selected for the county
of _____ on _____, the _____ day
of _____, 19____, pursuant to the directions of *The
Jurors Act*.

No. on List	NAMES	No. of Lot or House	Concession or Street, or Village or Ham- let	Residence	Occupations	No. on Roll	No. of Panel	Remarks to be filled in by Sheriff, see s. 74.
1	Adams, George..	5	5	King	Gentleman	5		
2	Alley, Simon....	21	7	King	Yeoman	2	1	
3	Ashford, Thomas	2	19	King	Yeoman	4		
4	Barclay, John...	19	8	King	Shoemaker	7		
5	Daniel, George..	9	5	King	Merchant	6		
6	Worth, David...	11	16	King	Yeoman	9		
	(<i>etc., to, say</i>)							
188	Yarrold, George.	14	9	King	Baker	1060	1	

These are to certify that on _____, the _____ day of _____, 19____,
the foregoing Petit Jury List for the County of _____ for the
Supreme Court for the year 19____, was duly selected from the Roll of
Petit Jurors to serve in the Supreme Court for the same year, pursuant
to the directions of *The Jurors Act*.

Witness our hands, this _____ day of _____, 19____.

C. D., Chairman,
E. F., Clerk of the Peace.

9.—PETIT JURY PANELS

FOR the Supreme Court of Ontario. (*See note 2*)

No. 1.

PANEL of Petit Jurors returned upon the Precept from the Honourable G.H., the Honourable J.J., etc., Justices of the Supreme Court, tested the day of , 19 , for the return of such Jurors, for the Sittings of the High Court of Justice (*or as the precept may require*) to be held for the County of on , the day of , 19 , as drafted on , the day of , 19 , at the office of the Clerk of the Peace in , by A.B., Esquire, Sheriff, in the presence of K.L. and M.N., Esquires, Justices of the Peace for the County, pursuant to the directions of *The Jurors Act*.

No. of Panel	NAMES	No. of Lot or House	Concession or Street, or Village or Ham- let	Municipality	Occupations	No. on List	Remarks
1	Alley, Simon...	21	7	King	Yeoman	2	
48	(<i>etc., to, say</i>) Yarrold, George	14	9	King	Baker	288	

Witness our hands, the day and year last above written.

A. B., Sheriff.
K. L., J. P.
M. N., J. P.

No. 2. (*See note 4.*)

10.—SPECIAL JURY PANEL

(Section 79)

No. 1. (See note 2)

PANEL of Special Jurors returned upon a Notice to the Sheriff in an action in the Supreme Court between *N.O.*, Plaintiff, and *P.Q.*, Defendant, as struck at the office of the Clerk of the Peace, in Toronto, on _____, the _____ day of _____, 19____, by *A.B.*, Esquire, Sheriff, in the presence of *R.S.*, Solicitor for the Plaintiff, and *T.A.*, Agent for the Solicitor of the Defendant (or in the presence of *R.S.*, Solicitor for the Plaintiff, the Defendant's Solicitor, though served with the appointment, not appearing), pursuant to the directions of *The Jurors Act*.

No. of Panel	NAMES	No. of Lot or House	Concession or Street, or Village or Hamlet	Municipality	Occupations	No. on Grand Jurors' Rolls	Remarks
1	Abbott, William	11	9	King	Gentleman	I.C. 31	From G. J. Roll for S. C. for year 19____. No. 10, the G. J. Roll for this year being exhausted.
2	Wilkins, James.	13	4	Markham	Esquire		
16	(Etc., to) Young, David..	7	8	King	Tailor	S.C. 20	

Witness my hand, the day and year last above written.

A. B., Sheriff.

R.S.O. 1937, c. 108, Sched. B.

No. 2. (See note 4.)

NOTE.—The corresponding Forms for the Inferior Courts of Civil and Criminal Jurisdiction shall be, with appropriate changes, Forms 7 to 10.

NOTES TO FORMS IN SCHEDULES A AND B

(1) *This Title to be placed at the head of each page of the Book.*

(2) *So much of this Sub-Title as ends with this word to be placed at the head of each page of the Book appropriated to this class of entries.*

(3) *This Roll to be commenced on a new page, after leaving a sufficient number of leaves for the Jury List to be selected from the preceding Roll and the probable number of Panels that may be drafted from such Lists in the course of the year.*

(4) *The subsequent Panels following immediately may be commenced on the same page on which the preceding one is closed.*

SCHEDULE C

(Section 91)

PAY LIST for Petit Jurors who have attended the Sittings of the
case may be, held for the of , begun on the day of , 19 , and ended on the day (as the day of

NAMES OF JURORS	Number of miles travelled in coming to Court	Check of Attendance								Amount to be paid to Juror		Jurors' signature acknowledging receipt of money
		1st day	2nd day	3rd day	4th day	5th day	6th day	7th day	8th day	\$	cts.	
John Just.....	21	present absent	present absent	present absent	present absent	present absent	present absent	present absent	present absent			
Charles Careless.....	..											

I, , Sheriff of the of , do hereby certify to the Treasurer of the , that the above is to the best of my knowledge, a correct return of the number of miles travelled by each Juror in coming to the Court; a true check of the number of days every such Juror attended the Court, and the just sum to which every Juror on the above list is entitled.

A. B., Sheriff.

R.S.O. 1937, c. 108, Sched. C.

SCHEDULE D

FORM 1

(Section 43)

In the Supreme Court of Ontario

George the Sixth, by the Grace of God, King, &c.

Ontario

County (or District) of

To Wit:

To the Sheriff of the _____ of _____

You are commanded that you cause to come before the Judge or other person holding the sittings of the Supreme Court (or County or District Court or Court of General Sessions of the Peace) at _____ in your Bailiwick, on the _____ day of _____, 19____, all panels concerning such sittings (*and when the sittings are for the trial of criminal as well as civil cases*), and also cause to come thirteen good and lawful men of your Bailiwick duly qualified to serve as Grand Jurors at the said sittings; and also summon a competent number, being not less than _____ good and lawful men duly qualified to serve as Petit Jurors for the trial of (Criminal and) Civil issues; and that you and your deputy Sheriff, Bailiffs, and other officers then and there attend in your proper persons to do those things which to your and their offices appertain. And that you have then and there the names of all Jurors and Constables whom you shall cause to come before us. And have then and there this Precept.

Dated at _____, this _____ day of _____, 19____.

FORM 2

(Section 45 (2))

Take notice that there being no business requiring the attendance of petit jurors at the sittings of the Supreme Court (or County or District Court or Court of General Sessions of the Peace) on the opening day thereof to be held the _____ day of _____, 19____, your attendance as a jurymen on that day is not required, and in so far as the summons served upon you requires your attendance on that day it shall be disregarded.

Further take notice that you are required to attend the sittings of this court on the _____ day of _____, 19____, at the hour of _____ o'clock in the _____ noon.

And further take notice that in case you attend at such sittings on any day prior to that last above mentioned, you will not be entitled to any fees or mileage for such attendance.

Dated at _____
this _____ day of _____, 19____.

Sheriff of the County
(or District) of _____

FORM 3

(Section 64 (1))

To

Take notice that you are required to attend the sittings of the Supreme Court (or County or District Court or Court of General Sessions of the Peace) to be held at _____, in the County (or District) of _____, on the _____ day of _____, 19____, as a Grand (or Special or Petit) Juror, and in default of your so attending you will be liable to the penalties provided by *The Jurors Act*.

Dated at _____, the _____ day of _____, 19____.

Sheriff of the County
(or District) of _____

FORM 4

(Section 64 (3))

To the Sheriff of the County (or District) of _____

Take notice that there is no (civil or criminal, as the case may be) business requiring the attendance of a jury at the ensuing sittings of the Supreme Court (or the County or District Court) to be held on the _____ day of _____, 19____, and that the attendance of jurymen at such sittings is not required.

Dated at _____, this _____ day of _____, 19____.

Registrar (or Local Registrar of the Supreme
Court, Clerk of the County Court or
Clerk of the Peace, as the case may be)
for the County or District of _____

FORM 5

(Section 64 (5))

To

Take notice that there being no business requiring the attendance of jurymen at the sittings of the Supreme Court (or the County or District Court) to be held on the _____ day of _____, 19____, your attendance as a jurymen at such sittings is not required, and the summons served upon you for your attendance is cancelled.

Further take notice that in case you attend at such sittings after the receipt by you of this notice you will not be entitled to any fees or mileage for such attendance.

This notice is given pursuant to *The Jurors Act*.

Dated at _____, this _____ day of _____, 19____.

Sheriff of the County
(or District) of _____

CHAPTER 192

The Justices of the Peace Act

1.—(1) Every judge of the Supreme Court of Canada, of the Exchequer Court of Canada, and of the Supreme Court of Ontario, and every judge and junior judge of a county or district court shall be *ex officio* a justice of the peace for every county, district and part of Ontario and as such shall have power to do alone whatever is authorized to be done by two or more justices of the peace. Justices of the peace *ex officio*.

(2) Sections 2 to 8 shall not apply to any person who is *ex officio* a justice of the peace. Idem. R.S.O. 1937, c. 132, s. 1.

2. Subject to section 3 the Lieutenant-Governor by commission under the Great Seal in pursuance of an Order in Council, whenever he thinks fit, may appoint justices of the peace in and for the Province of Ontario or any part thereof. Appointment. R.S.O. 1937, c. 132, s. 2; 1944, c. 28, s. 1.

3.—(1) Any person other than a barrister or solicitor desirous of being appointed a justice of the peace shall be subject to examination in regard to his qualification for the office by the judge of the county or district court of the county or district in which he resides, or by such other person as may be appointed in that behalf by the Lieutenant-Governor, and no such person shall be appointed a justice of the peace without a certificate from such judge or other person that he has examined the applicant and finds him qualified for the office and that in his opinion a justice of the peace is needed for the public convenience in matters pertaining to the administration of justice. Examination as to qualifications.

(2) The Lieutenant-Governor in Council may make regulations for such examination and certificate. Regulations. 1944, c. 28, s. 2.

4. Where a new general commission of the peace is issued all former general commissions shall become absolutely revoked and cancelled, but nothing in this Act shall prevent the reappointment of any justice of the peace named in any former commission, if the Lieutenant-Governor thinks fit, and the issue of a supplementary commission of the peace for any county or district shall not operate as a revocation of a general commission. Effect of a new general commission. R.S.O. 1937, c. 132, s. 3.

Revocation
of commis-
sions when
town
becomes
a city.

5. Where a town has been erected into a city, and the council of the city duly organized, every commission of the peace for the town shall cease. R.S.O. 1937, c. 132, s. 4.

Disability
of practising
solicitors.

6. Except where otherwise specially provided no solicitor shall be a justice of the peace during the time he continues to practise. R.S.O. 1937, c. 132, s. 5.

Disability
of sheriffs
and
coroners.

7. No sheriff or coroner in and for any county, district or place shall be competent or qualified to be a justice of the peace or to act as such for any county, district or place wherein he is sheriff or coroner, under the penalties hereinafter mentioned, and every act done by a sheriff or coroner, by the authority of any commission of the peace, shall be void. R.S.O. 1937, c. 132, s. 6.

Oath.

8.—(1) Every justice of the peace shall take and subscribe the following oath:

I, A. B., of the.....of....., in the County
of....., do swear that
I will well and truly serve our Sovereign Lord King George
(or the reigning Sovereign for the time being) in the office of Justice
of the Peace, and I will do right to all manner of people, after
the laws and usages of this Province, without fear or favour,
affection or ill-will. So help me God.

Sworn before me, etc.

A. B.

R.S.O. 1937, c. 132, s. 7.

Limitation
of time for
taking oath.

(2) Every person appointed a justice of the peace shall take such oath within three months from the date of the commission under which he is appointed, otherwise the commission shall, so far as the same relates to him, be deemed to be revoked and cancelled. R.S.O. 1937, c. 132, s. 8.

Filing oaths.

(3) Every such oath taken by a justice of the peace shall forthwith after the same is taken be transmitted or delivered by him to the clerk of the peace of the county or district within which he is to act, and shall be filed in the office of the clerk of the peace. R.S.O. 1937, c. 132, s. 9 (1).

Posting up.

(4) The clerk of the peace shall keep posted up in his office a list of the justices of the peace who have taken such oath and the same shall be open to inspection without payment of any fee. R.S.O. 1937, c. 132, s. 9 (2).

Effect of
attested
copy of
oath.

(5) The clerk of the peace shall, upon demand, forthwith deliver a true and attested copy of any such oath to any person paying the sum of 25 cents for the same, which copy being produced as evidence on the trial of any proceeding under this Act, shall have the same force and effect as the record of the oath would have if produced. R.S.O. 1937, c. 132, s. 10.

(6) It shall not be necessary for any justice of the peace named in any commission who, after his appointment as such justice by a former commission, took the oath to again take such oath before acting under the new commission. No new oath required from persons who have before qualified.
R.S.O. 1937, c. 132, s. 11.

(7) When not otherwise provided any person who acts as justice of the peace without having taken, subscribed and filed with the clerk of the peace such oath shall be guilty of an offence and on summary conviction shall be liable to a penalty of \$50. Penalty for acting without taking oath. R.S.O. 1937, c. 132, s. 12 (1).

(8) Where proceedings have been instituted under this section and are proceeded with without fraud and with effect no subsequent prosecution shall be brought against the same person for any offence committed before such proceedings were begun. Subsequent prosecution. R.S.O. 1937, c. 132, s. 12 (2).

9. Every justice of the peace shall have the same powers to administer oaths, affirmations and declarations as a commissioner appointed under *The Commissioners for taking Affidavits Act*. Power to take oaths. Rev. Stat., c. 57. R.S.O. 1937, c. 1, s. 23 (3), *amended*.

10. A justice of the peace shall have the right, unless another suitable place is provided by the municipality, to use the town hall of any municipality for the hearing of cases brought before him, but not so as to interfere with its ordinary use. Use of town hall. R.S.O. 1937, c. 132, s. 13.

11.—(1) A justice of the peace acting within his territorial jurisdiction, may take an information or issue a search warrant or a summons or warrant returnable before a magistrate having jurisdiction to try the case and may hear and determine a prosecution under a by-law of any municipality. Powers of justices of the peace.

(2) Save as provided in subsection 1, a justice of the peace shall not act in any case except under the direction of a magistrate or the Inspector of Legal Offices. Limitation of power. R.S.O. 1937, c. 132, s. 14.

12.—(1) Where a justice of the peace tries any offence, Returns of convictions, etc.
(a) under a municipal by-law; or
(b) under the direction of a magistrate or the Inspector of Legal Offices,

he shall make such returns as the Inspector of Legal Offices may direct. R.S.O. 1937, c. 132, s. 15.

Idem.

(2) Nothing in this Act shall exonerate a justice of the peace from duly returning to the court of general sessions of the peace any conviction or record of convictions which is by law required to be so returned. R.S.O. 1937, c. 132, s. 16.

Penalty.

(3) Every justice of the peace before whom a conviction takes place or who receives any money, who neglects or refuses to make the prescribed return or wilfully makes a false, partial or incorrect return, shall be liable to a penalty of \$60 together with full costs of suit. R.S.O. 1937, c. 132, s. 17 (1).

Not to apply to Toronto.

(4) This section shall not apply to the City of Toronto. R.S.O. 1937, c. 132, s. 18.

Fees in certain cases not otherwise provided for. R.S.C. 1927, c. 36. Rev. Stat., c. 379.

13. In cases not provided for by the *Criminal Code* (Canada) and *The Summary Convictions Act*, the Lieutenant-Governor in Council may prescribe the fees to be paid by a county, or, in the case of a provisional judicial district by the Province to a justice of the peace not receiving a salary. 1941, c. 55, s. 16, *amended*.

Mileage allowance.

14. Where the justice of the peace, for the convenience of witnesses and others, attends at a distance from his residence to hear the evidence on a criminal charge he shall be entitled to a mileage allowance of 15 cents a mile one way for the distance necessarily travelled, to be paid by the county, or, in the case of a district, by the Province. R.S.O. 1937, c. 132, s. 20.

Salaries, fees and emoluments.

15. The Lieutenant-Governor in Council may make regulations providing for the payment of salaries, fees and emoluments to justices of the peace and may direct that any city to which a justice of the peace is assigned shall pay to such justice of the peace such salary as may be determined by the Lieutenant-Governor in Council. R.S.O. 1937, c. 132, s. 21.

Penalty for charging excessive fees.

16. A justice of the peace who wilfully receives a larger fee than authorized by law shall be liable to a penalty of \$60, together with full costs of suit. R.S.O. 1937, c. 132, s. 22.

Application of penalties.

17. The penalties recovered under this Act shall belong to the Crown if the Crown is the prosecutor and if a private person is the prosecutor one-half shall belong to him and the other half to the Crown. R.S.O. 1937, c. 132, s. 12 (3).

CHAPTER 193

The Juvenile and Family Courts Act

1.—(1) In every city, town and county in which the *Juvenile Delinquents Act* (Canada) is proclaimed, there shall be a court of record to be known as the “juvenile court” of the city, town or county, as the case may be. Establishment of courts. 1929, c. 46 (Can.).

(2) The court shall have jurisdiction within such territory, in addition to the area included within the limits of such city, town or county, as the Lieutenant-Governor in Council may from time to time designate. Idem.

(3) The Lieutenant-Governor in Council may at any time establish a juvenile court for any municipality or for any portion thereof. Idem. R.S.O. 1937, c. 316, s. 1.

(4) Any order heretofore or hereafter made establishing a juvenile court shall be deemed not to be a regulation within *The Regulations Act*. 1950, c. 79, s. 10. Order not to come within Rev. Stat., c. 337.

2.—(1) When under *The Magistrates' Jurisdiction Act* or any other general or special Act of Ontario, jurisdiction is conferred upon the judge or a deputy judge of a juvenile court established under this Act to conduct inquiries or hear, try, determine or dispose of matters in addition to those in respect of which jurisdiction is conferred by this Act, such juvenile court shall be known as the “family court” of the municipality or area for which it is established, and the judge, deputy judges, officers and staff of such juvenile court shall be the judge, deputy judges, officers and staff of the family court. When juvenile court becomes family court. Rev. Stat., c. 220. R.S.O. 1937, c. 316, s. 2 (1); 1947, c. 53, s. 1.

(2) Every family court shall continue as a court of record and as a juvenile court for the purposes of this Act. R.S.O. 1937, c. 316, s. 2 (2). Continuance of family courts.

JURISDICTION

3. Every such court shall be a juvenile court for the purposes of the *Juvenile Delinquents Act* (Canada), and shall have all the powers vested in a juvenile court under that Act, and shall also have power to try any child charged with an offence against the laws of Ontario, and to deal with all cases where jurisdiction is conferred by any Act upon a juvenile court. R.S.O. 1937, c. 316, s. 4. Jurisdiction as to offences. 1929, c. 46 (Can.).

JUDGES

Judge,
appoint-
ment of.

4.—(1) The judge of a juvenile court shall be appointed by the Lieutenant-Governor in Council, and shall hold office during good behaviour and shall be subject to removal by the Lieutenant-Governor in Council. R.S.O. 1937, c. 316, s. 3 (1).

Deputy
judges,
appoint-
ment of.

(2) The Lieutenant-Governor in Council may appoint one or more deputy judges of any juvenile court each of whom shall act as judge of the court and shall perform such duties as may be assigned to him by the Attorney-General. 1947, c. 53, s. 2 (1).

In case of
absence of
judge or
deputy,
who may
act.

(3) In case of the absence or illness of the judge or of a deputy judge and on the written request and with the written approval of the Attorney-General, any other person may act as judge of the juvenile court. R.S.O. 1937, c. 316, s. 3 (3); 1947, c. 53, s. 2 (2).

When
justice of
the peace
may act.

(4) Any justice of the peace may, on the written request of the Attorney-General, act as juvenile court judge for the trial of any case specified in the request and while so acting shall have all the powers of a juvenile court. R.S.O. 1937, c. 316, s. 3 (4).

CLERKS

Clerk,
appoint-
ment and
removal;

5.—(1) There shall be a clerk of each juvenile court and, subject to section 10, such probation and other officers and staff as the judge of the court deems necessary, who shall be appointed and be removable by the Attorney-General. R.S.O. 1937, c. 316, s. 5.

duties;

(2) The clerk of a juvenile court shall see that all cases to be heard before the court are properly prepared, shall have before the court all papers and documents in such cases, shall arrange for the sittings of the court, and shall preserve order during such sittings. R.S.O. 1937, c. 316, s. 6.

idem.

(3) The clerk shall keep proper records, the form of which shall be approved by the Attorney-General, containing full particulars of the cases dealt with by the court, including the disposition or order made in each case, the parentage, nationality and religion of each delinquent or neglected child, and such other information as may be required. R.S.O. 1937, c. 316, s. 7.

PROBATION OFFICERS

Ex officio
probation
officers.

6.—(1) Every agent of a children's aid society shall be *ex officio* a probation officer of the juvenile court of the city or county in which the society is situated. R.S.O. 1937, c. 316, s. 8.

(2) The Attorney-General may appoint any person willing to perform the services of a probation officer without remuneration, to be a voluntary probation officer, and may at any time revoke the appointment and the judge of the juvenile court may appoint any person to be a voluntary probation officer to deal with the case of a particular child and may at any time revoke the appointment. R.S.O. 1937, c. 316, s. 9. Appointment without remuneration.

(3) Every probation officer, while acting in the discharge of his duties, shall have all the powers of a peace officer. R.S.O. 1937, c. 316, s. 10. Powers.

(4) Every probation officer shall have all the powers of a truant officer under *The School Attendance Act*. R.S.O. 1937, c. 316, s. 11. Idem. Rev. Stat., c. 347.

7. Subject to the regulations, all officers of the court shall be under the control and subject to the orders and directions of the judge. R.S.O. 1937, c. 316, s. 12. Control of officers.

JUVENILE COURT COMMITTEE

8. There shall be in connection with every juvenile court a committee of citizens, serving without remuneration, to be known as "the juvenile court committee", which committee shall be constituted as provided by the *Juvenile Delinquents Act* (Canada). R.S.O. 1937, c. 316, s. 13. Committee. 1929, c. 46 (Can.).

DETENTION HOMES

9.—(1) Every temporary home or shelter provided for children under *The Children's Protection Act*, and every institution for the care of children or children's home, the trustees of which have given their consent thereto, shall be a detention home within the meaning of the *Juvenile Delinquents Act* (Canada). Temporary homes, etc. Rev. Stat., c. 53.

(2) Subject to the *Juvenile Delinquents Act* (Canada), the Attorney-General may declare any place, house, home or institution a detention home within the meaning of that Act. Declaring place a detention home.

(3) The Attorney-General may make regulations for the government and management of detention homes in so far as they are used for that purpose. Government of detention homes.

(4) The corporation of the city, separated town or county within which the offence with which the child is charged was committed shall be liable for all expenses of maintaining the child in a detention home. Liability for maintenance in detention home.

Duty of
corporation.

(5) The corporation of any city, town or county in which a juvenile court is established and in which there is no detention home, or in which there is no detention home of sufficient capacity, shall provide a detention home satisfactory to the Attorney-General. R.S.O. 1937, c. 316, s. 14.

COURT ROOM, OFFICES AND EXPENSES OF COURT

Corporation to
provide
accommodation
and
salaries.

10.—(1) The corporation of any city, town or county in which a juvenile court is established shall provide a suitable court room and offices for the judge, deputy judges, clerk, probation officers and other officers of the court and shall make proper provision for the salaries of the judge, deputy judges, clerk, probation officers and other officers of the court and for the general expenses of the court. R.S.O. 1937, c. 316, s. 15 (1); 1947, c. 53, s. 3 (1).

Salaries of
judge and
amount of
expenses.

(2) The Lieutenant-Governor in Council may fix the salaries to be paid to the judge and deputy judges and the amount to be appropriated for other salaries and for the expenses of the court, and such salaries and expenses shall be paid by the city, town or county at the time and in the manner set forth in the Order in Council, provided that where fixed by the Lieutenant-Governor in Council the total amount so directed to be paid for the expenses of the court, including salaries, but exclusive of the cost of providing court room and offices and detention home, shall fall within the following limits:

Where the district covered by the court has,

Limit of
expenses
of court.

- (a) a population of more than 200,000, not more than \$100,000;
- (b) a population of more than 75,000, but less than 200,000, not more than \$50,000;
- (c) a population of more than 25,000, but less than 75,000, not more than \$25,000;
- (d) a population less than 25,000, not more than \$15,000.
R.S.O. 1937, c. 316, s. 15 (2); 1947, c. 53, s. 3 (2);
1949, c. 47, s. 1.

Salary of
judge in
district,
how ap-
portioned.

(3) Where a juvenile court has been established in a provisional judicial district for any territory in which there is a city or town, the Lieutenant-Governor in Council may fix the amount to be paid by the city or town towards the salaries and expenses of the court and prescribe the times and manner of making the payments. R.S.O. 1937, c. 316, s. 15 (3).

11. The Attorney-General shall have charge of the administration of this Act. R.S.O. 1937, c. 316, s. 16. Adminis-
tration.

12. The Lieutenant-Governor in Council may prescribe such forms and make such rules and regulations as may be deemed necessary for the full and proper carrying out of this Act. R.S.O. 1937, c. 316, s. 17. Forms and
regula-
tions.

CHAPTER 194

The Labour Relations Act**1.—(1) In this Act,**Interpre-
tation.

- (a) “bargaining unit” means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or any subdivision of either of them;
- (b) “Board” means Ontario Labour Relations Board;
- (c) “collective agreement” means an agreement in writing between an employer or an employers’ organization, on the one hand, and a trade union representing employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union or the employees;
- (d) “conciliation services” means the services of a conciliation officer and, if necessary, a conciliation board;
- (e) “employers’ organization” means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
- (f) “lock-out” includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, with a view to compel or induce his employees, or to aid another employer to compel or induce his employees, to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers’ organization, the trade union, or the employees;
- (g) “Minister” means Minister of Labour;
- (h) “strike” includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted

activity on the part of employees designed to restrict or limit output;

- (i) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

Idem.

(2) For the purposes of this Act no person shall be deemed to have ceased to be an employee by reason only of his ceasing to work for his employer as the result of a lock-out or strike or by reason only of his being dismissed by his employer contrary to this Act or to a collective agreement.

Idem.

(3) For the purposes of this Act, no person shall be deemed to be an employee,

- (a) who is a member of the architectural, dental, engineering, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; or
- (b) who is a manager or superintendent or who exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations. 1950, c. 34, s. 1.

APPLICATION OF ACT

Where Act
not to
apply.

2. This Act does not apply,

- (a) to any domestic employed in a private home;
- (b) to any person employed in agriculture, horticulture, hunting or trapping;
- (c) to any member of a police force within the meaning of *The Police Act*;
- (d) to any full-time fire fighter within the meaning of *The Fire Departments Act*; or
- (e) to any teacher as defined in *The Teaching Profession Act*. 1950, c. 34, s. 2.

Rev. Stat.,
c. 279.

Rev. Stat.,
c. 138.

Rev. Stat.,
c. 385.

FREEDOMS

Membership
in trade
union.

3. Every person is free to join a trade union of his own choice and to participate in its lawful activities. 1950, c. 34, s. 3.

Membership
in
employers'
organization.

4. Every person is free to join an employers' organization of his own choice and to participate in its lawful activities. 1950, c. 34, s. 4.

ESTABLISHMENT OF BARGAINING RIGHTS BY CERTIFICATION

5. A trade union may apply to the Board for certification as bargaining agent of the employees of an employer in a unit which it claims to be appropriate for collective bargaining. Application for certification.
1950, c. 34, s. 5.

6.—(1) Upon an application for certification the Board shall determine the unit of employees that is appropriate for collective bargaining, but which in every case shall consist of more than one employee. Board to determine appropriateness of units.

(2) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or craft shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to such skills or craft. 1950, c. 34, s. 6. Craft units.

7.—(1) Upon an application for certification the Board shall ascertain, by an examination of the records of the trade union and the records of the employer, the number of employees in the bargaining unit who are members of the trade union. Determination of number of union members in bargaining unit.

(2) If on an examination under subsection 1 the Board is satisfied that not less than 45 per cent and not more than 55 per cent of the employees in the bargaining unit are members of the trade union, the Board shall, and if the Board is satisfied that more than 55 per cent of such employees are members of the trade union, the Board may direct that a representation vote be taken. Representation vote.

(3) If on the taking of a representation vote more than 50 per cent of the ballots of all those eligible to vote are cast in favour of the trade union, and in other cases if the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union, the Board shall certify the trade union as the bargaining agent of the employees in the bargaining unit. Certification after vote.

(4) In determining the number of eligible voters for the purpose of subsection 3, employees who are absent from work during voting hours and who do not cast their ballots shall not be counted as eligible. Absent employees.

Certification
without vote.

(5) If on an examination under subsection 1 the Board is satisfied that more than 50 per cent of the employees in the bargaining unit are members of the trade union and that the true wishes of the employees are not likely to be disclosed by a representation vote, the Board may certify the trade union as bargaining agent without taking a representation vote. 1950, c. 34, s. 7.

Security
guards.

8. The Board shall not include in a bargaining unit with other employees any person employed as a guard to protect the property of his employer and no trade union shall be certified as bargaining agent for a bargaining unit of such guards if it admits to membership or is chartered by, or is affiliated, directly or indirectly, with an organization that admits to membership persons other than such guards. 1950, c. 34, s. 8.

What
unions not
to be
certified.

9. The Board shall not certify any trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it. 1950, c. 34, s. 9.

NEGOTIATION OF COLLECTIVE AGREEMENTS

Notice of
desire to
bargain.

10. Following certification, the trade union shall give the employer written notice of its desire to bargain with a view to making a collective agreement. 1950, c. 34, s. 10.

Obligation
to bargain.

11. The parties shall meet within 20 days from the giving of the notice or within such further period as the parties may agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement. 1950, c. 34, s. 11.

Composition
of
bargaining
committee.

12. During bargaining a trade union shall be represented by a bargaining committee consisting of employees of the employer who are in the bargaining unit, or in the case of bargaining between a trade union and an employers' organization, consisting of employees of one or more members of such organization who are in the bargaining unit, and in either case a bargaining committee may include one or more officers or other representatives of the trade union. 1950, c. 34, s. 12.

Requests for
conciliation
services.

13.—(1) Where 50 days or more have elapsed from the giving of the notice and it appears that a collective agreement will not be made within a reasonable time, either party may file with the Board a request that conciliation services be made available to the parties, whereupon the Board shall grant the request, but before doing so it may postpone con-

sideration of the request from time to time to a specified date and direct the parties to continue to bargain in the meantime.

(2) Upon the joint request of the parties, or upon the request Idem. of either of them, the Board, if it is satisfied that no progress in bargaining is being made, may grant the request for conciliation services notwithstanding that the fifty-day period mentioned in subsection 1 has not elapsed. 1950, c. 34, s. 13.

14.—(1) Where the Board grants a request for conciliation services the Minister shall forthwith appoint a conciliation Conciliation officer, appointment; officer.

(2) The conciliation officer shall confer with the parties duties. and endeavour to effect a collective agreement and he shall, within 14 days from his appointment, report the result of his endeavour to the Minister.

(3) The period mentioned in subsection 2 may be extended Extension of 14-day period. by agreement of the parties or by the Minister upon the advice of the conciliation officer that a collective agreement may be made within a reasonable time if such period is extended. 1950, c. 34, s. 14.

15. If the conciliation officer is unable to effect a collective agreement within the time allowed under section 14, the Minister shall forthwith by notice in writing request each of the parties, within seven days of the receipt of the notice, to recommend one person to be a member of a conciliation board, and the Minister shall, upon the receipt of the recommendations or upon the expiration of the seven-day period appoint two members who, in his opinion, represent the points of view of the respective parties, and the two members so appointed may, within five days after they are appointed, jointly recommend a third person to be a member and chairman of the board, and the Minister shall, upon the receipt of the recommendation or upon the expiration of the five-day period, appoint a third person to be a member and chairman of the board. 1950, c. 34, s. 15. Conciliation board, appointment of members.

16. No person shall act as a member of a conciliation board who has any pecuniary interest in the matters coming before it or who is acting, or has, within a period of six months preceding the date of his appointment, acted as solicitor, counsel or agent of either of the parties. 1950, c. 34, s. 16. Certain persons prohibited as members.

17.—(1) When the members of the conciliation board have been appointed, the Minister shall forthwith give notice of Notice to parties of appointment. their names to the parties and thereupon the board shall be deemed to have been established.

Presumption
of establish-
ment.

(2) When notice under subsection 1 has been given it shall be presumed conclusively that the conciliation board has been established in accordance with this Act, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question the establishment of the conciliation board or the appointment of any of its members, or to review, prohibit or restrain any of its proceedings. 1950, c. 34, s. 17.

Vacancies.

18. If a person ceases to be a member of a conciliation board by reason of his resignation or death before it has completed its work, the Minister shall appoint a member in his place after consulting the party whose point of view was represented by such person. 1950, c. 34, s. 18.

Terms of
reference.

19. As soon as a conciliation board has been established, the Minister shall deliver to its chairman a statement of the matters referred to it and the Minister may, either before or after its report is made, amend or add to such statement. 1950, c. 34, s. 19.

Oath of
office.

20. Each member of a conciliation board shall, before entering upon his duties, take and subscribe before a person authorized to administer oaths, and file with the Minister, an oath in the following form:

I do solemnly swear that I am not disqualified under section 16 of *The Labour Relations Act*, from acting as a member of a conciliation board and that I will faithfully, truly and impartially, to the best of my knowledge, skill and ability, execute and perform the office of member (*or* chairman) of the conciliation board established to.....

.....
and that I will not, except as I may be legally authorized, disclose to any person any of the evidence or other matter brought before the board. So help me God.

1950, c. 34, s. 20.

Duties.

21. As soon as a conciliation board is established it shall endeavour to effect agreement between the parties on the matters referred to it. 1950, c. 34, s. 21.

Procedure.

22.—(1) Subject to this Act, a conciliation board shall determine its own procedure.

Presentation
of evidence.

(2) A conciliation board shall give full opportunity to the parties to present their evidence and to make their submissions. 1950, c. 34, s. 22.

23. The chairman of a conciliation board shall, after ^{Sittings.} consultation with the other members of the board, fix the time and place of its sittings, and he shall notify the parties and the other members of the board of the time and place so fixed. 1950, c. 34, s. 23.

24. The chairman and one other member of a conciliation ^{Quorum.} board shall constitute a quorum but, in the absence of any member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting. 1950, c. 34, s. 24.

25. If the members of a conciliation board are unable to ^{Casting} agree among themselves on matters of procedure or as to the ^{vote.} admissibility of evidence, the decision of the chairman shall govern. 1950, c. 34, s. 25.

26. A conciliation board shall have power, ^{Powers.}

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the board deems requisite to the full investigation and consideration of the matters referred to it in the same manner as a court of record in civil cases;
- (b) to administer oaths;
- (c) to accept such oral or written evidence as it in its discretion may deem proper, whether admissible in a court of law or not;
- (d) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the matters referred to the board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such matters;
- (e) to authorize any person to do anything that the board may do under clause *d* and to report to the board thereon. 1950, c. 34, s. 26.

27.—(1) A conciliation board shall, within 14 days from ^{When report} the appointment of its chairman, report its findings and ^{to be made.} recommendations to the Minister and the report of the majority shall be the report of the board.

Extension
of 14-day
period.

(2) The period mentioned in subsection 1 may be extended by agreement of the parties or by the Minister upon the advice of the conciliation board that agreement may be effected between the parties on the matters referred to the board if such period is extended.

Clarification
etc., of
report.

(3) After a conciliation board has made its report, the Minister may direct it to clarify or amplify any part of its report, and the report shall not be deemed to have been received by the Minister until it has been so clarified or amplified.

Copies of
reports to
parties.

(4) On receipt of the report of the conciliation board the Minister shall forthwith cause a copy thereof to be sent to each of the parties. 1950, c. 34, s. 27.

Remun-
eration.

28. The members of a conciliation board shall be remunerated for their services as follows:

1. To a member, other than the chairman, an allowance of \$5 for considering the recommendation of a person to be the third member of the board.
2. To a member, other than the chairman, an allowance of \$20 and to the chairman, an allowance of \$25, for each day he is present when the board sits and for each day necessarily spent in travelling from his place of residence to its meetings and returning therefrom, and for each day, not exceeding two, he is engaged in preparing the report of the board.
3. To each member, his actual, necessary and reasonable travelling and living expenses for each day that he is absent from his place of residence in connection with the work of the board. 1950, c. 34, s. 28.

Failure
to report.

29. Failure of a conciliation officer or conciliation board to report to the Minister within the time provided in this Act shall not invalidate the proceedings of the conciliation officer or conciliation board or terminate the authority of the conciliation board under this Act. 1950, c. 34, s. 29.

CONTENTS OF COLLECTIVE AGREEMENTS

Recognition
provision.

30.—(1) Every collective agreement made after the 1st day of September, 1950, shall provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein.

(2) If any collective agreement made either before or after the 1st day of September, 1950, does not contain such a provision as is mentioned in subsection 1, it may be added to the agreement at any time by the Board upon the application of either party. 1950, c. 34, s. 30. Addition by Board.

31.—(1) Every collective agreement made after the 1st day of September, 1950, shall provide that there will be no strikes or lock-outs so long as the agreement continues to operate. Provision against strikes and lock-outs.

(2) If any collective agreement made either before or after the 1st day of September, 1950, does not contain such a provision as is mentioned in subsection 1, it may be added to the agreement at any time by the Board upon the application of either party. 1950, c. 34, s. 31. Addition by Board.

32.—(1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable. Arbitration provision.

(2) If a collective agreement does not contain such a provision as is mentioned in subsection 1, it shall be deemed to contain the following provision: Idem.

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board. The recipient of the notice shall within five days advise the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chairman. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chairman, within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision shall be final and binding upon the parties and upon any employee affected by it. The decision of a majority shall be the decision of the arbitration board, but if there is no majority the decision of the chairman shall govern.

Where arbitration provision inadequate.

(3) If, in the opinion of the Board, any part of the arbitration provision including the method of appointment of the arbitrator or arbitration board is inadequate, or if the provision set out in subsection 2 is alleged by either party to be unsuitable, the Board may, on the request of either party, modify any such provision so long as it conforms with subsection 1, but until so modified the arbitration provision in the collective agreement or in subsection 2, as the case may be, shall apply.

Effect of arbitrator's decision.

(4) The decision of an arbitrator or of an arbitration board shall be binding upon the parties and in the case of a collective agreement between a trade union and an employers' organization upon the employers covered by the agreement who are affected by the decision and upon the employees covered by the agreement who are affected by the decision, and such parties, employers and employees shall do or abstain from doing anything required of them by the decision.

Rev. Stat., c. 20 not to apply.

(5) *The Arbitration Act* shall not apply to arbitrations under collective agreements. 1950, c. 34, s. 32.

Permissive provisions.

33.—(1) Notwithstanding anything in this Act, the parties to a collective agreement may include in it provisions,

- (a) for requiring, as a condition of employment, membership in the trade union that is a party to the agreement or granting a preference of employment to members of such trade union, or requiring the payment of dues or contributions to such trade union;
- (b) for permitting an employee who represents the trade union that is a party to the agreement to attend to the business of the trade union during working hours without deduction of the time so occupied in the computation of the time worked for the employer and without deduction of wages in respect of the time so occupied;
- (c) for permitting the trade union that is a party to the agreement to use the employers' premises for the purposes of the trade union without payment therefor.

Membership in two unions.

(2) No employer shall discharge an employee who is expelled or suspended from membership in the trade union mentioned in clause *a* of subsection 1 solely because he is a member of another trade union. 1950, c. 34, s. 33.

OPERATION OF COLLECTIVE AGREEMENTS

34. An agreement between an employer or an employers' organization and a trade union shall be deemed not to be a collective agreement for the purposes of this Act,

Certain agreements not to be treated as collective agreements.

(a) if any employer or any employers' organization participated in the formation or administration of the trade union or if any employer or any employers' organization contributed financial or other support to the trade union; or

(b) if it discriminates against any person because of his race or creed. 1950, c. 34, s. 34.

35. A collective agreement made before or after the 1st day of September, 1950, shall, subject to and for the purposes of this Act, be binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement. 1950, c. 34, s. 35.

Binding effect of collective agreements on employers, trade unions, and employees.

36.—(1) A collective agreement made after the 1st day of September, 1950, between an employers' organization and a trade union shall, subject to and for the purposes of this Act, be binding upon each person who was a member of the employers' organization at the time bargaining commenced and on whose behalf the employers' organization bargained with the trade union as if it was made between each of such persons and the trade union, and if any such person ceases to be a member of the employers' organization during the term of operation of the agreement, he shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union.

Binding effect of collective agreements on members of employers' organizations.

(2) When an employers' organization commences to bargain with a trade union, it shall deliver to the trade union a list of the names of the employers on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members of the employers' organization for whose employees the trade union is entitled to bargain and to make a collective agreement at that time. 1950, c. 34, s. 36.

Duty to disclose.

37.—(1) If a collective agreement made before or after the 1st day of September, 1950, does not provide for its term of operation or provides for its operation for an unspecified term or for a term of less than one year, it shall be deemed to provide for its operation for a term of one year from the date that it commenced to operate.

Minimum term of collective agreements.

Extension
of term
of
collective
agreements.

(2) Notwithstanding subsection 1, the parties may, before or after a collective agreement has ceased to operate, agree to continue its operation or any of its provisions for any period less than one year while they are bargaining for the renewal, with or without modifications of it, or for a new agreement, but such continued operation shall not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit.

Early
termination
of collective
agreements.

(3) A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties.

Revision
by mutual
consent.

(4) Nothing in this section shall be deemed to prevent the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation. 1950, c. 34, s. 37.

Notice of
desire to
bargain
for new
collective
agreement.

38.—(1) Either party to a collective agreement made before or after the 1st day of September, 1950, may within the period of two months before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

Idem.

(2) A notice given by a party to a collective agreement in accordance with provisions in the agreement relating to its termination or renewal shall be deemed to comply with subsection 1.

Notice of
desire for
new
collective
agreement
for
employers'
organization.

(3) Where notice is given by or to an employers' organization that has a collective agreement with a trade union, it shall be deemed to be a notice given by or to each member of the employers' organization who is bound by the agreement. 1950, c. 34, s. 38.

Application
of ss. 11
to 29.

39. Sections 11 to 29 shall apply to the bargaining that follows the giving of a notice under section 38. 1950, c. 34, s. 39.

TERMINATION OF BARGAINING RIGHTS

Application
for new
certification,
one-year
agreements;

40.—(1) Where a collective agreement is for a term of one year a trade union may apply for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the agreement has been in operation for 10 months.

(2) Where a collective agreement is for a term of one year and it provides that it will continue to operate for a further term of one year or for successive terms of one year if either party fails to give to the other party notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement and no such notice is given, a trade union may apply for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the agreement has been in operation for ten months and before it has been in operation for twelve months or during a similar two-month period at the end of each year that the agreement continues to operate, as the case may be. agreements from year to year;

(3) Where a collective agreement is for a term of more than one year, a trade union may apply for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the agreement has been in operation for ten months and before it has been in operation for twelve months or during a similar two-month period at the end of each year that the agreement continues to operate or not more than two months before the agreement ceases to operate, as the case may be. agreements for more than one year;

(4) If the trade union that applies for certification under subsection 1, 2, or 3 is certified as bargaining agent for any of the employees in the bargaining unit defined in the collective agreement, the trade union that was or is a party to the agreement, as the case may be, shall forthwith cease to represent the employees in the bargaining unit determined in the certificate and the agreement shall cease to operate in so far as it affects such employees. 1950, c. 34, s. 40. effect of certification.

41.—(1) If a trade union does not make a collective agreement with the employer within one year after its certification any of the employees in the bargaining unit determined in the certificate may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit. Application for termination, no agreement;

(2) Any of the employees in the bargaining unit defined in a collective agreement may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit, agreement.

- (a) in the case of an agreement for a term of one year, only after the agreement has been in operation for ten months;
- (b) in the case of an agreement for a term of one year that provides that it will continue to operate for a

further term of one year or for successive terms of one year if either party fails to give to the other party notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement and no such notice is given, only after the agreement has been in operation for ten months and before it has been in operation for twelve months or during a similar two-month period at the end of each year that the agreement continues to operate, as the case may be;

- (c) in the case of an agreement for a term of more than one year only after the agreement has been in operation for ten months and before it has been in operation for twelve months or during a similar two-month period at the end of each year that the agreement continues to operate or not more than two months before the agreement ceases to operate, as the case may be.

Representation
vote.

(3) Upon an application under subsection 1 or 2 the Board shall ascertain whether a majority of the employees in the bargaining unit have signified in writing that they no longer wish to be represented by the trade union and, if a majority so signify, the Board shall, by a representation vote, satisfy itself that a majority of the employees desire that the right of the trade union to bargain on their behalf be terminated.

Declaration
of
termination.

(4) If on the taking of the representation vote more than 50 per cent of the ballots of all those eligible to vote are cast in opposition to the trade union, the Board shall declare that the trade union that was certified or that was or is a party to the collective agreement, as the case may be, no longer represents the employees in the bargaining unit.

Absent
employees.

(5) In determining the number of eligible voters for the purpose of subsection 4, employees who are absent from work during voting hours and who do not cast their ballots shall not be counted as eligible.

Declaration
to terminate
agreement.

(6) Upon the Board making a declaration under subsection 4, any collective agreement in operation between the trade union and the employer that is binding upon the employees in the bargaining unit shall cease to operate forthwith. 1950, c. 34, s. 41.

Where
certificate
obtained
by fraud.

42. If a trade union has obtained a certificate by fraud, the Board may at any time declare that the trade union no longer represents the employees in the bargaining unit and,

upon the making of such a declaration, the trade union shall not be entitled to claim any rights or privileges flowing from certification and, if it has made a collective agreement binding upon the employees in the bargaining unit, such agreement shall be null and void. 1950, c. 34, s. 42.

43.—(1) If a trade union fails to give the employer notice under section 10 within 60 days following certification or if it fails to give notice under section 38 and no such notice is given by the employer, the Board may, upon the application of the employer or of any of the employees in the bargaining unit, and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit. Termination, for failure to give notice;

(2) Where a trade union that has given notice under section 10 or section 38 or that has received notice under section 38 fails to commence to bargain within 60 days from the giving of the notice, or after having commenced to bargain but before the Board has granted a request for conciliation services, allows a period of 60 days to elapse during which it has not sought to bargain, the Board may, upon the application of the employer or of any of the employees in the bargaining unit and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit. 1950, c. 34, s. 43. for failure to bargain.

44.—(1) Where notice is given under section 38 and the Board grants a request for conciliation services, no application for certification of a bargaining agent of any of the employees in the bargaining unit as defined in the collective agreement shall be made after the date when the agreement ceases to operate or the date when the request is granted, whichever is later, unless following the granting of the request a collective agreement has been made between the parties and it has operated for at least 10 months. Application for certification after conciliation services granted.

(2) Where notice is given under section 38 and the Board grants a request for conciliation services, no application for a declaration that the trade union that was or is a party to the collective agreement, as the case may be, no longer represents the employees in the bargaining unit as defined in the agreement shall be made after the date when the agreement ceases to operate or the date when the request is granted, whichever is later, unless following the granting of the request a collective agreement has been made between the parties and it has operated for at least 10 months, or if no such agreement has been made, unless at least 12 months have elapsed from the date of the granting of the request. 1950, c. 34, s. 44. Application for termination after conciliation services granted.

UNFAIR PRACTICES

Employers
not to
interfere
with unions.

45. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation or administration of a trade union or contribute financial or other support to a trade union. 1950, c. 34, s. 45.

Unions not
to interfere
with
employers'
organiza-
tions.

46. No trade union and no person acting on behalf of a trade union shall participate in or interfere with the formation or administration of an employers' organization or contribute financial or other support to an employers' organization. 1950, c. 34, s. 46.

Employers
not to
interfere
with
employees'
rights.

47. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ any person, or discriminate against any person in regard to employment or any term or condition of employment because the person is a member of a trade union or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to exercise any other rights under this Act. 1950, c. 34, s. 47.

Intimidation
and coercion.

48.—(1) No person shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization.

Persuasion
during
working
hours.

(2) Nothing in this Act shall be deemed to authorize any person to attempt at the place at which an employee works to persuade him during his working hours to become or refrain from becoming or continuing to be a member of a trade union. 1950, c. 34, s. 48.

49.—(1) Where a collective agreement is in operation, no employee bound by the agreement shall strike and no employer bound by the agreement shall lock out such an employee. Strike or lock-out, agreement;

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until a trade union has become entitled to give and has given notice under section 10 or has given notice under section 38 on behalf of the employee to his employer, or in the case of a notice under section 38, has received such notice, and conciliation services have been granted and seven days have elapsed after the conciliation board has reported to the Minister. 1950, c. 34, s. 49. no agreement.

50. No trade union shall call or authorize, and no officer, official or agent of a trade union shall counsel, procure, support or encourage an unlawful strike. 1950, c. 34, s. 50. Unlawful strikes.

51. No employer or employers' organization shall call or authorize, and no officer, official or agent of an employer or employers' organization shall counsel, procure, support or encourage an unlawful lock-out. 1950, c. 34, s. 51. Unlawful lock-outs.

52. Nothing in this Act shall be deemed to prohibit any suspension or discontinuance for cause of an employer's operations or the quitting of employment for cause if the suspension, discontinuance or quitting does not constitute a lock-out or strike. 1950, c. 34, s. 52. Saving.

53. Where notice has been given under section 10 or section 38 and no collective agreement is in operation, no employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer, the trade union, or the employees until conciliation services have been granted and seven days have elapsed after the conciliation board has reported to the Minister or until the right of the trade union to represent the employees has been terminated, whichever occurs first. 1950, c. 34, s. 53. Working conditions may not be altered.

INFORMATION

54. Each party to a collective agreement shall, forthwith after it is made, file one signed copy thereof with the Board. 1950, c. 34, s. 54. Collective agreements to be filed.

55. The Board may direct any trade union or employers' organization to file with the Board within the time prescribed in the direction a copy of its constitution and by-laws and a Officers, constitution, etc.

statutory declaration of its president or secretary setting forth the names and addresses of its officers. 1950, c. 34, s. 55.

Publications.

56. Every publication that deals with the relations between employers or employers' organizations and trade unions or employees shall bear the names and addresses of its printer and its publisher. 1950, c. 34, s. 56.

ENFORCEMENT

**Inquiry by
conciliation
officer;**

57.—(1) The Minister may appoint a conciliation officer to inquire into any complaint that any person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act.

duties;

(2) The conciliation officer shall forthwith after he is appointed inquire into the complaint and endeavour to effect a settlement of the matter complained of.

report.

(3) The conciliation officer shall report the results of his inquiry and endeavours to the Minister. 1950, c. 34, s. 57.

**Commis-
sioners,
appoint-
ment;**

58.—(1) If the conciliation officer is unable to effect a settlement of the matter complained of, the Minister may appoint a commissioner and shall forthwith communicate the name of the commissioner to the parties and thereupon it shall be presumed conclusively that the commissioner was appointed in accordance with this Act, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto or otherwise to question the appointment of the commissioner, or to review, prohibit or restrain any of his proceedings.

powers;

(2) The commissioner shall have all the powers of a conciliation board under section 26.

duties;

(3) The commissioner shall give the parties full opportunity to present evidence and to make submissions and if he finds that the complaint is supported by the evidence he shall recommend to the Minister the course that ought to be taken with respect to the complaint, which may include reinstatement with or without compensation for loss of earnings and other benefits.

**clarification
etc., of
recommen-
dations;**

(4) After a commissioner has made his recommendations, the Minister may direct him to clarify or amplify any of his recommendations and they shall not be deemed to have been

received by the Minister until they have been so clarified or amplified.

(5) The Minister shall issue whatever order he deems ^{Minister's order;} necessary to carry the recommendations of the commissioner into effect and the order shall be final and shall be complied with in accordance with its terms.

(6) A commissioner shall be remunerated for his services ^{remuneration.} at the same rate as the chairman of a conciliation board. 1950, c. 34, s. 58.

59. Where a trade union calls or authorizes a strike which the employer or employers' organization concerned alleges is ^{Declaration of unlawful strikes.} unlawful, the employer or employers' organization may apply to the Board for a declaration that the strike is unlawful and the Board may make such a declaration. 1950, c. 34, s. 59.

60. Where an employer or employers' organization calls or authorizes a lock-out which any of the employees or the trade union concerned alleges is ^{Declaration of unlawful lock-outs.} unlawful, any of the employees or the trade union may apply to the Board for a declaration that the lock-out is unlawful and the Board may make such a declaration. 1950, c. 34, s. 60.

61.—(1) Every person, trade union or employers' organization who fails to comply with any provision of this Act or of any decision, order, direction, declaration or ruling made under this Act shall be guilty of an offence and on summary conviction shall be liable, ^{Offences and penalties.}

(a) if an individual, to a penalty of not more than \$100; or

(b) if a corporation, trade union or employers' organization, to a penalty of not more than \$1,000.

(2) Each day that any person, trade union or employers' organization fails to comply with any provision of this Act or of any decision, order, direction, declaration or ruling made under this Act shall be deemed to constitute a separate ^{Continued offences.} offence.

(3) Every penalty recovered for an offence under this Act shall be paid to the Treasurer of Ontario and shall form part ^{Disposition of penalties.} of the Consolidated Revenue Fund. 1950, c. 34, s. 61.

62. An information or complaint in respect of any contravention of this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceedings in any such prosecution is objectionable or insufficient ^{Information may be in respect of one or more offences.}

by reason of the fact that it relates to two or more offences. 1950, c. 34, s. 62.

Parties.

63. If a corporation, trade union or employers' organization is guilty of an offence under this Act, every officer, official or agent thereof who assented to the commission of the offence shall be deemed to be a party to and guilty of the offence. 1950, c. 34, s. 63.

Style of prosecutions.

64. A prosecution for an offence under this Act may be instituted against a trade union or employers' organization in the name of the union or organization, and any act or thing done or omitted by an officer, official or agent of a trade union or employers' organization within the scope of his authority to act on behalf of the union or organization shall be deemed to be an act or thing done or omitted by the union or organization. 1950, c. 34, s. 64.

Consent.

65. No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board. 1950, c. 34, s. 65.

ADMINISTRATION

Board continued;

66.—(1) The Ontario Labour Relations Board is continued.

composition;

(2) The Board shall consist of a chairman and four other members who shall be equally representative of employers and employees.

appointments;

(3) The chairman and other members of the Board shall be appointed by the Lieutenant-Governor in Council and shall hold office during pleasure.

vice-chairman;

(4) The Lieutenant-Governor in Council may appoint a vice-chairman who shall act as chairman and as a member of the Board only,

(a) at such times or in such matters as the chairman may direct; and

(b) at such times as the chairman is unable to act.

oath of office;

(5) Each member of the Board shall, before entering upon his duties, take and subscribe before the Clerk of the Executive Council and file in his office an oath of office in the following form:

I do solemnly swear that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of member (*or* chairman, *or* vice-chairman)

of the Ontario Labour Relations Board and will not, except in the discharge of my duties, disclose to any person any of the evidence or any other matter brought before the Board. So help me God.

(6) The office of the Board shall be in Toronto but the office; Board may sit at such other places as it deems expedient.

(7) A majority of the members of the Board shall constitute quorum; a quorum.

(8) The decision of the majority of the members of the decisions; Board present and constituting a quorum shall be the decision of the Board, and in the event of a tie the chairman or vice-chairman, as the case may be, shall have a casting vote.

(9) The Board shall have an official seal. seal;

(10) The Board shall determine its own practice and pro- procedure; cedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions, and the Board may, subject to the approval of the Lieutenant-Governor in Council, make rules governing its practice and procedure and prescribing such forms as may be deemed advisable.

(11) The Lieutenant-Governor in Council may appoint a registrar, such other officers and such clerks and servants as etc.; may be required for the purposes of the Board and they shall exercise such powers and perform such duties as may be conferred or imposed upon them by the Board.

(12) The chairman, the vice-chairman, if any, the other remun- members of the Board and its registrar and other officers shall eration. be paid such remuneration as may be fixed by the Lieutenant-Governor in Council. 1950, c. 34, s. 66.

67.—(1) The Board shall exercise such powers and per- Powers and form such duties as may be conferred or imposed upon it by duties of or under this Act. Board, general;

(2) Without limiting the generality of subsection 1 the specific. Board shall have power,

(a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the Board deems requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;

- (b) to administer oaths;
- (c) to accept such oral or written evidence as it in its discretion may deem proper, whether admissible in a court of law or not;
- (d) to require employers to post and to keep posted upon their premises in a conspicuous place or places where they are most likely to come to the attention of all employees concerned, any notices that the Board deems necessary to bring to the attention of such employees in connection with any proceedings before the Board;
- (e) to enter any premises where work is being or has been done by the employees or in which the employer carries on business, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter;
- (f) to enter upon the premises of employers and conduct representation votes during working hours and give such directions in connection with the vote as it may deem necessary;
- (g) to authorize any person to do anything that the Board may do under clauses *a* to *f* and to report to the Board thereon;
- (h) to bar an unsuccessful applicant for certification or for a declaration that a trade union no longer represents the employees from filing a new application for any period that the Board may specify not exceeding 10 months. 1950, c. 34, s. 67.

Jurisdiction.

68.—(1) The Board shall have exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and without limiting the generality of the foregoing, if any question arises in any proceeding,

- (a) as to whether a person is an employer or an employee;
- (b) as to whether an organization is a trade union or an employers' organization;
- (c) as to whether a collective agreement has been made or as to whether it is in operation or as to who the parties are or who are bound by it or on whose behalf it was made;
- (d) as to whether a group of employees constitute a bargaining unit;

- (e) as to whether the parties have bargained in good faith and made every reasonable effort to make a collective agreement;
- (f) as to whether a trade union represents the employees in a bargaining unit; or
- (g) as to whether a person is a member of a trade union,

the decision of the Board thereon shall be final and conclusive for all purposes, but nevertheless the Board may at any time if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

(2) If in the course of bargaining for a collective agreement, *Idem.* or, if during the period of operation of a collective agreement, any question arises as to whether a person is an employee, the question may be referred to the Board and the decision of the Board thereon shall be final and conclusive for all purposes. 1950, c. 34, s. 68.

69. No decision, order, direction, declaration or ruling of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question, review, prohibit or restrain the Board or any of its proceedings. 1950, c. 34, s. 69.

Board's orders not subject to review.

70. No member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil suit respecting information obtained in the discharge of their duties under this Act. 1950, c. 34, s. 70.

Protection from being called as witness.

71. Any document purporting to be or to contain a copy of a decision, order, direction, declaration or ruling of the Board and purporting to be signed by a member of the Board or by its registrar shall be accepted by any court as evidence of such decision, order, direction, declaration or ruling. 1950, c. 34, s. 71.

Documentary evidence.

GENERAL

72.—(1) The records of a trade union relating to membership or any records that may disclose whether any person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in any proceeding before the Board shall be for the exclusive use of the Board

Secrecy as to union membership.

and its officers and shall not, save with the consent of the Board, be disclosed, and no person shall, save with the consent of the Board, be compelled to disclose whether any person is or is not a member of a trade union or does or does not desire to be represented by a trade union.

Secrecy of
information
given
conciliation
officers.

(2) No information or material furnished to or received by a conciliation officer under this Act and no report of a conciliation officer shall be disclosed except to the Minister, the Deputy Minister of Labour or the chief conciliation officer of the Department of Labour, and no conciliation officer shall be a competent or compellable witness in any proceedings before any court or other tribunal respecting any such information, material or report. 1950, c. 34, s. 72.

Delegation
of Minister's
powers to
Deputy
Minister.

73. Where an appointment, order or direction is required to be made under this Act by the Minister, he may authorize the Deputy Minister of Labour to make such appointment, order or direction, and any document purporting to be or to contain a copy of any such appointment, order or direction purporting to be signed by the Minister or by the Deputy Minister shall be accepted by any court as evidence of such appointment, order or direction. 1950, c. 34, s. 73.

Mailed
notices.

74. For the purposes of this Act and of any proceedings taken under it, any notice or communication sent through His Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail. 1950, c. 34, s. 74.

Defects in
form;
technical
irregularities.

75. No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity nor shall such proceedings be quashed or set aside if no substantial wrong or miscarriage of justice has occurred. 1950, c. 34, s. 75.

Administra-
tion cost.

76. The expenses incurred in the administration of this Act shall be paid out of such moneys as may be appropriated by the Legislature for the purpose. 1950, c. 34, s. 76.

Regulations.

77. The Lieutenant-Governor in Council may make regulations,

- (a) to provide for and regulate the engagement of experts, investigators and other assistants by conciliation boards;
- (b) to prescribe procedures regulating the payment of expenses of conciliation boards;

- (c) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1950, c. 34, s. 77.

78. Any municipality as defined in *The Department of Municipal Affairs Act* may declare that this Act shall not apply to it in its relations with its employees or any of them. 1950, c. 34, s. 81.

Municipalities, local boards, etc.
Rev. Stat., c. 96.

CHAPTER 195

The Lakes and Rivers Improvement Act

INTERPRETATION

1. In this Act,Interpre-
tation.

- (a) "dam" means a dam or other work forwarding, holding back or diverting water;
- (b) "floating of timber" includes transmission of timber;
- (c) "lake" includes pond;
- (d) "Minister" means Minister of Lands and Forests;
- (e) "regulations" means regulations made by the Lieutenant-Governor in Council under this Act;
- (f) "river" includes creek and stream;
- (g) "timber" includes rafts and crafts, saw logs, posts, ties, cordwood, pulpwood, masts, staves, deals, boards, and all sawed and manufactured lumber.
R.S.O. 1937, c. 45, s. 1.

GENERAL PROVISIONS

2.—(1) The Lieutenant-Governor in Council may make Regulations, such regulations as he may deem necessary,

- (a) for the safe and orderly floating of timber down lakes and rivers, and for preventing the use of the lakes and rivers for the purpose of navigation by vessels and boats being unnecessarily impeded or interfered with by the timber;
- (b) as to the construction, description and dimensions of the aprons or slides which are to be provided for or in connection with dams by the owners and occupiers of them;
- (c) generally respecting the use under the provisions of this Act of lakes and rivers and waters therein;
- (d) prescribing penalties for contravention of such regulations.

(2) The regulations may be general in their application, or be applicable to any particular Part of this Act or to any particular lake or river or to any particular dam or work.
R.S.O. 1937, c. 45, s. 2 (1, 2).

Compliance
with Part
VI.

3. Every person making use of a lake or river upon which works are constructed under this Act or any other Act for the purpose of floating timber shall comply with the requirements of Part VI as to timber driving. R.S.O. 1937, c. 45, s. 3.

County or
district
judge sole
arbitrator
for determin-
ing claims.

4. Wherever in this Act any claim for compensation for land, property or works taken or injuriously affected or a claim or dispute is to be determined by arbitration, a judge of the county or district court of the county or district in which the land, property or works are situate or in which the claim or dispute arises or, in the case of a claim under Part VI, in which the timber in connection with which the claim or part of the claim is made or the greater part of such timber is situate at the time of the service of the notice of claim, shall be the sole arbitrator for such purpose and the provisions of *The Arbitration Act* shall otherwise apply. R.S.O. 1937, c. 45, s. 4.

Rev. Stat.,
c. 20.

Where com-
pensation
for flooding
or injury by
dam made
before grant
from the
Crown.

5. Where land is overflowed or otherwise injured by the maintenance of a dam which was erected before the land was granted by the Crown, and the grantee or any person under whom he derived title obtained a reduction in the price of the land on account of, or was otherwise indemnified for, its being overflowed or otherwise injured by the dam, no subsequent owner of the land shall be entitled to maintain an action against the owner or occupier of the dam for damages for any overflowing or injury to the land due to the continuance of the dam. R.S.O. 1937, c. 45, s. 5.

Restrictions
upon
operations.

6. Nothing in this Act shall authorize any person to obstruct any waters already navigable or to collect tolls other than those upon timber. R.S.O. 1937, c. 45, s. 6.

Rights of
parties as to
water powers
created.

7. If, by reason of a dam erected for the floating of timber, any water power is created the owner of the dam shall not have any title or claim to the use of such water power; but, if the owner or occupier of the adjoining land claims compensation for damages arising from such dam the claim shall be determined by arbitration and the arbitrator may take into account the increased value of his land by reason of the water power so created. R.S.O. 1937, c. 45, s. 7.

PART I

CONSTRUCTION, REPAIR AND USER OF DAMS

Interpre-
tation

8. In this Part, "owner" means the owner of a dam and includes the person constructing, maintaining and operating it. R.S.O. 1937, c. 45, s. 8.

9.—(1) A dam shall not be constructed on any lake or river unless the site and plans and specifications thereof have been approved by the Minister, and such approval shall be deemed to be of an administrative and not of a legislative nature. 1949, c. 48, s. 1 (1).

Approval
of plans
of dams.

(2) Application for such approval shall be made in writing to the Minister and shall be accompanied by,

Application
for approval.

- (a) complete copies of the plans and a report of the engineer in charge of the work showing full details of the construction of sluice-gates, spillways and other works connected with the dam and the height at which the water is to be held;
- (b) a map of the watershed affected which shall show the area of the watershed above the dam with the estimated elevation of high water caused by the spring, summer and autumn freshets, where the water level is raised by the dam, and the submerged areas at low, normal and high water periods, in different colours;
- (c) particulars as to the nature of the bottom or foundation on which the dam is to be constructed with reports of all boring or test pits;
- (d) such other particulars as the Minister shall require;

provided that nothing herein shall prevent or apply to the construction of an emergency dam where such construction may be considered necessary for the prevention of loss or damage, but the owner in such case shall immediately give notice to the Minister that he is proceeding with the construction of the dam and shall thereafter comply with any directions of the Minister as to the precautions to be taken in maintaining the dam or its removal when the purpose for which it was constructed has been served. R.S.O. 1937, c. 45, s. 9 (2); 1949, c. 48, s. 1 (2).

(3) The approval of the Minister shall not be given until an engineer designated by him (hereinafter referred to as "the engineer") has examined the plans, documents and other information and recommended the approval of the proposed dam. R.S.O. 1937, c. 45, s. 9 (3); 1949, c. 48, s. 1 (3).

Engineer to
examine
plans.

(4) Upon the request of the Minister made either before or after the construction thereof every such dam hereafter constructed shall be provided with a fishway which will permit the free and unobstructed passage of fish up and down stream at any season of the year. R.S.O. 1937, c. 45, s. 9 (4); 1948, c. 87, s. 4 (1).

Fishway.

Approval
of plans
and
specifications.

10. Where a dam has heretofore been or is hereafter constructed in any lake or river and it is proposed to make improvements to the dam the improvements shall not be proceeded with until complete copies of the plans and specifications have been approved by the Minister, and such approval shall be deemed to be of an administrative and not of a legislative nature. R.S.O. 1937, c. 45, s. 10; 1949, c. 48, s. 2.

Requiring
production
of plans on
report of
engineer.

11.—(1) Where a dam has heretofore been or is hereafter constructed in any lake or river and an engineer or other officer of the Department of Lands and Forests reports that by reason of the construction or condition of the dam water may be held, released or diverted in sufficient volume to cause personal injury or damage to property, the Minister may require the owner of the dam to furnish within a given time the plans and other particulars mentioned in subsection 2 of section 9.

Failure to
furnish
plans.

(2) Upon failure on the part of the owner to furnish such plans and other particulars within the time specified, the Minister may require the engineer to make an examination and report on the dam, and the expenses incurred in making the examination and report shall be a debt due by the owner to the Crown, and the amount thereof as certified by the Minister shall be recoverable with costs in any court of competent jurisdiction at the suit of the Treasurer of Ontario.

Engineer
to have
free access.

(3) For the purpose of making the report, the engineer shall have free access to all parts of the dam and to the adjoining or neighbouring lands and to all plans, books, accounts, documents and reports relating to the construction of the dam. R.S.O. 1937, c. 45, s. 11 (1-3).

Order to
repair,
improve, etc.

(4) On the report of the engineer, the Minister may make such order as he may deem necessary to ensure the safety of the public or of persons whose lands and property may be endangered by the dam, and for such purpose may order the owner to repair, improve, open up or remove it, and may fix the time within which such repairs, improvements, opening up or removal shall be completed. R.S.O. 1937, c. 45, s. 11 (4); 1949, c. 48, s. 3 (1).

Effect of
non-com-
pliance with
order.

(5) Upon non-compliance with the order within the time limited or, in case the Minister deems that the repairs, improvements, opening up or removal ordered is immediately required in an emergency, the Minister shall have power to do whatever is necessary to comply with the order and the cost of any work done by or under the direction of the Minister, as certified by him, shall be a debt due by the owner to the

Crown and shall be recoverable with costs in any court of competent jurisdiction at the suit of the Treasurer of Ontario. R.S.O. 1937, c. 45, s. 11 (5).

(6) Where any dam heretofore constructed has not been provided with a fishway the Minister may direct that the owner of the dam shall forthwith provide a fishway to permit the free and unobstructed passage of fish up and down stream at any season of the year. R.S.O. 1937, c. 45, s. 11 (6); 1949, c. 48, s. 3 (2). Direction for fishway to be provided.

12. Where water is impounded for power development or storage purposes the Minister may order the owner of any dam that impounds the water, or the owner of any lands so flooded, to clear timber from the lands so flooded. 1949, c. 48, s. 4, *part*. Clearing timber from flooded lands.

13.—(1) The Minister may authorize the engineer to inspect or cause an inspection to be made of any dam or other structure or work for the development, improvement or utilization of the waters of any lake or river and report in writing upon the state of repair of the dam or other structure or work. Minister may authorize inspection.

(2) The Minister may, after the receipt of the report of the engineer, order the owner of the dam or other structure or work to repair or reconstruct the same within the time specified in the order. Repair or reconstruction.

(3) Where the owner fails to comply with an order made under this section the Minister may cause the repairs or reconstruction to be made and the rights of the owner in the dam or other structure or work shall be forfeited to the Crown upon payment of such compensation as the Lieutenant-Governor in Council may direct. 1949, c. 48, s. 4, *part*. Non-compliance with order for repair, etc.

14.—(1) Every person who, Penalties.

- (a) constructs or maintains a dam in contravention of this Part;
- (b) refuses or neglects to comply with an order, requirement or direction of the Minister made under this Part; or
- (c) hinders or obstructs the engineer in the performance of his duties under this Part, or refuses or neglects to produce any plans, accounts, documents or report relating to the construction of a dam when required by the engineer,

shall on summary conviction be liable to a penalty of not more than \$500, and if after conviction such default continues, such person shall be liable to a further penalty of \$10 for each day upon which the default continues. 1946, c. 89, s. 26 (2); 1949, c. 48, s. 5.

Liability of person not restricted by conviction under subsection 1.

(2) The conviction of any person under subsection 1 shall not affect the liability of such person for damages or otherwise either at common law or under any statute in force in Ontario. R.S.O. 1937, c. 45, s. 12 (2).

Plans, etc., to be filed in Department.

15. All plans, orders and reports furnished or made under this Part shall be kept on file in the Department of Lands and Forests. R.S.O. 1937, c. 45, s. 13.

Disputes as to user.

16. Where it appears expedient in the public interest, or where a conflict or dispute arises between persons having a right to use a lake or river, or any works or other improvements thereon for floating timber or between such persons and any other persons having the right to use a lake or river for any other purpose, the Minister may appoint an officer or officers with such powers and duties as may be deemed expedient to be in charge of the lake or river or any works or improvements thereon and to regulate the use of the lake or river or any works or improvements thereon in such manner as seems best calculated to afford to persons having diverse interests on the lake or river or in the works or improvements a fair and reasonable use of the waters of the lake or river; provided that where any alterations of the level of international boundary waters is involved such regulation, powers and duties shall conform to any order or recommendation which the International Joint Commission may make under the terms and authority of the International Boundary Waters Treaty between Great Britain and the United States. R.S.O. 1937, c. 45, s. 14.

Regulation of use of water.

17. Where a dam or other structure or work for the development, improvement or utilization of a water power on any river down which any timber is floated has been heretofore or is hereafter constructed, the Minister, with the approval of the Lieutenant-Governor in Council, may make such order as he may deem expedient respecting the use of the river or of the waters of it, or of any water which is or is intended to be stored by means of any such dam, structure or work by the owners and occupiers of it, or of any work operated wholly or partly by the power so developed or improved and by persons using the river for the purpose of floating timber. R.S.O. 1937, c. 45, s. 15.

18. Subject to compensation being made as provided by *The Public Works Act* for any damages sustained by reason thereof, the Minister may authorize any engineer, agent, workman or servant employed by or under him to enter into and upon any land and remove any rocks, stones, gravel, slab or timber jam, dam or part of any dam, rubbish of any kind or other obstruction in any lake or river, the removal of which he deems necessary or expedient in the public interests. R.S.O. 1937, c. 45, s. 16.

Removal of obstructions, dams, etc., on order of Minister. Rev. Stat., c. 323.

19.—(1) A judge of the county or district court of the county or district in which any part of any works used for floating timber is situate, on the complaint of any person interested in the floating of timber down any lake or river, through or over the works upon which tolls are collected, that the works are clearly inadequate by reason of being out of repair, shall appoint an inspector to examine the works and to report on the state of repair thereof.

Works out of repair.

(2) The judge shall, after report of the inspector, order what repairs are necessary and shall be made by the owner of the works, and the time by which the repairs shall be made and completed.

Order to repair.

(3) If the owner does not comply with the order the person so interested may make the repairs, and the cost thereof, or such portion of them as the judge determines, shall be paid by the owner and be a lien and charge in favour of such person on the works and tolls.

When person interested may repair.

(4) The judge may require the applicant to deposit with the clerk of the court such sum as will, in the opinion of the judge, be sufficient to pay the fees and expenses of the inspector, to be allowed by the judge at a rate of not more than \$10 per day and actual travelling expenses, and such sum, when the works are found to be clearly inadequate by reason of being out of repair, may in the discretion of the judge be made a lien or charge in favour of the person paying the same on the works and tolls.

Deposit to cover fees.

(5) The applicant shall, before the application comes on to be heard, file with the judge a bond signed by himself in the sum of \$100 and by two sufficient sureties, who shall duly qualify, each in the sum of \$50, conditioned to pay to the owner such costs connected with the application and subsequent proceedings as the owner may become entitled to.

Bond to cover costs.

(6) Four days notice of the application shall be sufficient and the notice may be served upon the owner or in the case of a company upon the president, secretary or superintendent, manager or acting manager thereof.

Notice.

Costs in discretion of judge, etc.

(7) The costs incidental to the application shall be upon the county court or division court scale as the judge may direct.

Interpretation

(8) "Inspector" means a person appointed by the Lieutenant-Governor in Council to act as inspector of works constructed for the floating of timber. R.S.O. 1937, c. 45, s. 17.

Provision for passage of timber.

20. Where a dam is now or shall hereafter be erected on or across any lake or river down which timber is usually floated such dam shall at all times be provided with a slide or apron for the passage of timber of such description and dimensions as shall be prescribed by the regulations. R.S.O. 1937, c. 45, s. 18.

Apron to admit of timber passing.

21. Every such apron shall be so constructed and maintained as to afford depth of water sufficient to admit of the passage over it of such timber as is usually floated down the lake or river on which the dam is erected. R.S.O. 1937, c. 45, s. 19.

Penalty for not providing apron.

22.—(1) The owner and occupier of a dam who does not provide, maintain and keep in repair an apron thereto in accordance with the regulations, shall on summary conviction be liable to a penalty of \$20 for every day on which the default occurs or during which it continues.

Where apron carried away penalty suspended.

(2) Where the apron is carried away, destroyed or damaged by flood or otherwise the owner or occupier of the dam shall not be liable to the penalty provided by subsection 1 if the apron is repaired or reconstructed as soon as the state of the lake or river safely permits. R.S.O. 1937, c. 45, s. 20.

PART II

PROCLAMATION CONTROLLING NAMED LAKE OR RIVER

Control by Order in Council.

23. The Lieutenant-Governor in Council may declare that any lake or river shall be subject to this Part. R.S.O. 1937, c. 45, s. 21; 1946, c. 89, s. 26 (3).

Jurisdiction of Minister.

24.—(1) From and after a date named in the declaration made under section 23, all questions arising in relation to the lake or river,

(a) as to the right to construct or use works or improvements thereon;

(b) as to the respective rights of persons using the lake or river for the purpose of floating timber thereon;

(c) as to the right to interfere with, alter or obstruct in any manner the flow of the water in the lake or river,

shall be determined by the Minister upon application to him by any of the parties concerned, and after such notice to other parties interested as the Minister may direct, and no action or other proceeding shall lie or be taken in any court with respect to any such matter. R.S.O. 1937, c. 45, s. 22 (1); 1946, c. 89, s. 26 (4).

(2) The order of the Minister given in writing shall be final and shall not be subject to appeal. Decision to be final.

(3) Any such order may be filed in the office of the Registrar of the Supreme Court, or in the office of the local registrar or deputy registrar, and upon being so filed it shall become an order of the Supreme Court and may be enforced in the same manner and by the like process as if it had been made by that court. Enforcement of order of Minister.

(4) The like fees shall be payable as upon an order made by a judge of the Supreme Court in the exercise of his ordinary jurisdiction. Fees on filing order.

(5) The order shall be entered in the same manner as a judgment of the court. R.S.O. 1937, c. 45, s. 22 (2-5). Entry of order.

PART III

PUBLIC RIGHTS IN LAKES AND RIVERS

25. This Part shall be subject to the provisions of Parts I and II. R.S.O. 1937, c. 45, s. 23. Application.

26.—(1) All persons shall have the right to and may, subject to the provisions of this Part, float timber down all lakes and rivers during the spring, summer and autumn freshets. Right to float timber.

(2) No person shall, by felling trees or placing any other obstruction in or across a lake or river, prevent the floating of timber. Duty not to obstruct.

(3) If it is necessary to remove an obstruction from a lake or river, or to construct a dam, apron, slide, gate, lock, boom or other work therein or thereon in order to facilitate the floating of timber down the lake or river, the person requiring Right to remove obstructions and to construct works.

so to float the same may remove the obstruction, and may construct the dam, apron, slide, gate, lock, boom or other work, doing no unnecessary damage to the lake or river or to its banks.

Right to persons driving timber, etc., to go on banks.

(4) All persons driving timber down a lake or river shall have the right to go along the banks of the lake or river for the purpose of assisting and to assist the floating of the timber by all means usual with lumbermen, doing no unnecessary damage to the banks of the lake or river. R.S.O. 1937, c. 45, s. 24.

Right of public to use works and improvements.

27. A person who has constructed in or upon a lake or river, which was not navigable or floatable before the same was constructed, a dam, apron, slide, gate, lock, boom or other work necessary to facilitate the floating of timber down the lake or river, or blasts rocks or removes shoals or other impediments from or otherwise improves the floatability of the lake or river, shall not have the exclusive right to the use of the lake or river or of the works or improvements, but all persons, subject to the payment of tolls fixed under Part V, shall have the right during the spring, summer and autumn freshets to float timber down the lake or river and through and over such works and improvements, doing no unnecessary damage. R.S.O. 1937, c. 45, s. 25.

Act to apply whether land patented or not.

28. All the rights conferred by this Part shall extend and apply to all works and improvements heretofore or hereafter made, on a lake or river, whether the bed of the lake or river has been granted by the Crown or not. R.S.O. 1937, c. 45, s. 26.

Moving timber across lakes, etc.

29.—(1) Where upon the course of a river it enters or widens into a lake or other considerable body of water, every person using the river for the purpose of floating timber shall provide proper and adequate means by a steam tug or otherwise to move his timber across the lake or body of water with expedition.

Minister may order use of power.

(2) The Minister may by his order in writing direct what kind of power or appliance shall be used in bringing timber across the lake or body of water from the place of entrance to the outlet. R.S.O. 1937, c. 45, s. 27 (1, 2).

Penalty.

(3) Any person contravening or neglecting to obey the terms of the order shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$500. R.S.O. 1937, c. 45, s. 27 (3); 1946, c. 89, s. 26 (5).

OBSTRUCTIONS IN LAKES AND RIVERS

30.—(1) Every person who cuts and fells, and the employer of every person who cuts and fells any tree into a lake or river down which timber is usually floated, or upon such parts of the banks of it as are usually overflowed in the spring, summer or autumn freshets, without lopping off the branches of the tree and cutting up the trunk into lengths of not more than 18 feet before the tree is allowed to be floated or cast into the lake or river shall for every such offence on summary conviction be liable to a penalty of not more than \$10.

Penalty for not lopping off branches of trees, etc.

(2) Subsection 1 shall not apply to timber prepared for transportation to market. R.S.O. 1937, c. 45, s. 28.

Exception.

31.—(1) No person shall throw, and no owner or occupier of a mill shall suffer or permit to be thrown into a lake or river slabs, bark, stumps, roots, shrubs, waste wood, leached ashes, sawdust or other refuse from a saw mill and no person shall fell or cause to be felled into or across a river any tree and allow it to remain in or across such river.

Prohibition against throwing refuse into lake or river, etc.

(2) For every contravention of subsection 1 the person offending shall on summary conviction be liable to a penalty of not more than \$20 and not less than 20 cents for each day during which the obstruction continues over and above all damages arising therefrom.

Penalty.

(3) Where damage to private property is caused by a contravention of this section the damages may, at the request of the person aggrieved, be assessed by the convicting magistrate and included in the conviction when the damages together with the penalty imposed do not exceed \$20.

When damages may be assessed:

(4) Where damages are so assessed they shall be paid to the person aggrieved.

and paid to person aggrieved.

(5) This section shall not apply to the St. Lawrence River or the Ottawa River.

Exception.

(6) No such obstruction happening without the wilful default of the person by whom it is caused, or in the *bona fide* exercise of his rights, shall subject him to the penalty unless he makes default in removing the obstruction after notice and reasonable time afforded for that purpose.

As to obstructions not wilful.

(7) This section shall not apply to a dam, weir or bridge erected in, across or over a lake or river, or to anything done *bona fide* in or for erecting the same, or to any tree cut down or felled across a river for the purpose of being used as a bridge

When section not to apply.

from one side of it to the other, if the dam, weir, bridge or tree does not impede the flow of water or the floating of timber. R.S.O. 1937, c. 45, s. 29.

DISCRETIONARY POWERS OF COURT

Interpre-
tation

32.—(1) In this section, “mill” means a plant or works in which logs or wood-bolts are processed and includes a saw mill, a pulp mill, and a pulp and paper mill.

Discretion of
court as to
granting of
injunction
in certain
cases.

(2) Where in an action or proceeding a person claims, and but for this section would be entitled to, an injunction against the owner or occupier of a mill for an injury or damage, direct or consequential, sustained by such person, or for any interference directly or indirectly with any rights of such person as riparian proprietor or otherwise, by reason or in consequence of the throwing, depositing or discharging, or permitting the throwing, depositing or discharging of any refuse, sawdust, chemical, substance or matter from the mill or from it and other mills into a lake or river, or by reason or in consequence of any odour arising from any such refuse, sawdust, chemical, substance or matter so thrown, deposited or discharged or so permitted to be thrown, deposited or discharged, the court or judge may,

- (a) refuse to grant an injunction if it is proved that having regard to all the circumstances and taking into consideration the importance of the operation of the mill to the locality in which it operates and the benefit and advantage, direct and consequential, which the operation of the mill confers on that locality and on the inhabitants of the locality, and weighing the same against the private injury, damage or interference complained of, it is on the whole proper and expedient not to grant the injunction; or
- (b) grant an injunction to take effect after such lapse of time or upon such terms and conditions or subject to such limitations or restrictions as may be deemed proper; or
- (c) in lieu of granting an injunction, direct that the owner or occupant of the mill take such measures or perform such acts to prevent, avoid, lessen or diminish the injury, damage or interference complained of as may be deemed proper.

Right to
damages not
affected.

(3) Nothing in subsection 2 shall affect any right of the person claiming the injunction to damages against the owner or occupier of the mill for any such injury, damage or interference,

(4) Where damage from the same cause continues the person entitled to the damages may apply from time to time in the same action or proceeding for the assessment of subsequent damages or for any other relief to which by subsequent events he may from time to time become entitled. Subsequent damages.

(5) This section shall apply whether the injury, damage or interference is or is not a continuing one, and whether the person claiming the injunction in the action or proceeding is a plaintiff or is a defendant proceeding by way of counterclaim. Application of section.
1949, c. 48, s. 6 (1).

PART IV

TIMBER SLIDE COMPANIES

33. In this Part, "works" means a dam, slide, pier, boom or other work constructed or proposed to be constructed in or upon a lake or river in order to facilitate the floating of timber down the lake or river and any improvements made or proposed to be made to the floatability of a lake or river by the blasting of rocks or dredging or the removal of shoals or other impediments or otherwise. R.S.O. 1937, c. 45, s. 31. Interpretation.

34. A company may be incorporated under *The Companies Act* for the purpose of acquiring or constructing and maintaining and operating works upon a lake or river in Ontario, and every such company shall thereupon become subject to all the provisions of this Part. R.S.O. 1937, c. 45, s. 32. Powers to be granted to companies. Rev. Stat., c. 59.

35. The application for the letters patent shall give, Application for letters patent.

- (a) a detailed description of the works proposed to be undertaken and an estimate of their cost;
- (b) an estimate from the best available sources of the quantity of different kinds of timber expected to come down the lake or river yearly after the works have been completed. R.S.O. 1937, c. 45, s. 33.

36. The letters patent incorporating the company for any of the purposes mentioned in section 34 shall not be issued until proof has been furnished to the Minister, When letters patent may be issued.

- (a) that the proposed capital is sufficient to carry out the objects for which the company is to be incorporated, that such capital has been subscribed or underwritten and that the applicants are likely to command public trust and confidence in the undertaking;

- (b) that notice of the application for the letters patent has been served upon all timber licensees and other persons known to be interested in the works proposed to be constructed,

nor until approval of the proposed work has been obtained under Part I, and the Minister has certified to the Provincial Secretary that, in his opinion, it is proper that they should be issued. R.S.O. 1937, c. 45, s. 34.

Rate of dividend.

37. The Lieutenant-Governor in Council may, in the letters patent, state a rate of dividend, not exceeding 12 per cent per annum, which the company shall be at liberty to pay to the shareholders, if the revenues of the company otherwise justify such payment. R.S.O. 1937, c. 45, s. 35.

Limitation of company's existence.

38. The existence of the company may be limited to a term of years, not exceeding 21, to be fixed by the letters patent. R.S.O. 1937, c. 45, s. 36.

Property vesting in the Crown on expiration of company's existence.

39. Upon the expiration of the period limited for the existence of the company all the works constructed by the company shall become the property of His Majesty for the public uses of Ontario, and shall be under the control of the Department of Lands and Forests, and the company, or the shareholders thereof, shall have no right to compensation therefor. R.S.O. 1937, c. 45, s. 37.

Company's existence to continue for the purpose of winding up.

40. Notwithstanding the expiration of the period limited for the existence of the company it shall continue to exist for the purpose of taking such proceedings as may be requisite for winding up and settling its affairs, and for getting in its assets and distributing them amongst its shareholders; and the company may, for those purposes, sue and be sued as if the period of its corporate existence had not expired; but after such period the words "in liquidation" shall be added to the name of the company and shall be a part of such name. R.S.O. 1937, c. 45, s. 38.

Distribution of capital and profits.

41. No distribution of capital shall be made under section 40 until three years after the expiration of the period limited for the existence of the company, but this shall not prevent the distribution amongst the shareholders of the annual profits received from investments, and after such three years section 95 of *The Companies Act* shall not apply. R.S.O. 1937, c. 45, s. 39.

Rev. Stat., c. 59.

Yearly report to the Minister.

42. The directors of the company incorporated shall annually, in the month of January, make to the Minister a

report, verified by the oath of the treasurer of the company, specifying,

- (a) the cost of the works;
- (b) the amount of all money expended;
- (c) the amount of the capital stock, and the amount paid in;
- (d) the whole amount of tolls expended on the works;
- (e) the amount received during the year from tolls and all other sources, stating each separately, and distinguishing the tolls on different kinds of timber;
- (f) the amount of dividends paid;
- (g) the amount expended for repairs;
- (h) the amount of the debts due by the company, stating the objects for which they were respectively incurred;
- (i) a detailed description of any extension or improvement of the works or of any new works proposed to be undertaken in the following year, together with an estimate of the cost thereof. R.S.O. 1937, c. 45, s. 40.

43. The company shall keep proper books of account Books of account. containing full and true statements of,

- (a) the financial transactions of the company;
- (b) the assets of the company;
- (c) the sums received and expended by the company and the matters in respect of which the receipt or expenditure took place; and
- (d) the credits and liabilities of the company,

and such books shall be at all times open to the inspection and examination of any shareholder. R.S.O. 1937, c. 45, s. 41.

44.—(1) The company shall have the right to expropriate Rights of expropriation. any land, right or easement requisite for the purpose of its undertaking, and the amount of compensation therefor shall be determined by arbitration.

(2) In ascertaining the amount of the compensation due Ascertaining compensation. regard shall be had to the benefits which will accrue to the person claiming compensation from the construction of the intended works. R.S.O. 1937, c. 45, s. 42.

Interference
with
property
of others.

45. No company shall construct its works over or upon or otherwise interfere with or injure any private property or the property of His Majesty, without first having obtained the consent of the owner or occupier thereof, or of His Majesty, except as is in this Part provided. R.S.O. 1937, c. 45, s. 43.

Compensation for
existing
works
taken over.

46.—(1) If there is already established by any person, other than a company formed under this Part or under any Act of the Legislature, any works on a lake or river for the improvement of which a company is formed under this Part, such company may with the approval of the Minister take possession of the works, and the owners thereof, or, if the works have been constructed on the property of His Majesty, the person at whose cost they have been constructed, shall be entitled to compensation for the value of the works, either in money or in stock of the company, at the option of the owner or the person at whose cost the works were constructed, and may become a shareholder in the company for an amount equal to the value of the works, such value to be ascertained by arbitration.

Formalities
to be
observed by
company
acquiring
existing
works.

(2) Where the company purchases or takes possession of the works, and does not make or construct any other works than those so acquired, the company shall furnish the Minister with a detailed description of such works and the amount of the purchase price or compensation. R.S.O. 1937, c. 45, s. 44.

Mill sites,
etc., not to
be taken
without
consent of
owner.

47.—(1) Nothing herein shall authorize a company formed under this Part to take possession of or injure any mill site upon which there are existing mills or machinery, or hydraulic works other than those intended to facilitate the passage of timber, and no company formed under this Part shall commence any work which interferes with or endangers such occupied mill site without the consent in writing of the owner, or unless it is determined by arbitration that the proposed works will not injure such mill site.

Registering
consent
or award.

(2) The consent or award shall be registered in the same manner as the instrument of incorporation of the company. R.S.O. 1937, c. 45, s. 45.

Time for
completion
of works.

48.—(1) The company shall, within two years from its incorporation, complete every work undertaken by it and mentioned in the application for the letters patent, and for the completion of which the company is incorporated, in default of which the company shall be liable to forfeit the right to all the corporate and other powers and authority which it has acquired, and the Attorney-General may cause proceedings to be taken in the name of His Majesty to set aside the

charter by serving notice upon the company, and the Lieutenant-Governor in Council may, after an opportunity to be heard has been given to the company, declare that its corporate powers shall cease and determine at a date to be named in the Order in Council.

(2) From and after that date all the corporate powers of the company shall cease and determine unless, prior to the taking of proceedings by the Attorney-General, further time is granted by the Minister, or the completion of the works appears to be unnecessary and is dispensed with by him.

Cessor of
corporate
powers.

(3) If in the opinion of the Minister the company has abandoned for one year any works completed by it so that the same are not in sufficient repair and cannot be used for the purpose for which they were undertaken, the Minister may by his order in writing declare that the corporate powers of the company shall cease and determine to the extent set out in the order. R.S.O. 1937, c. 45, s. 46.

Default in
completing
works.

49. Any two companies formed for the construction of works on contiguous waters may unite and form one consolidated company on such terms as to them seem meet, and the name of the company to be then assumed shall thenceforth be its corporate name, and letters patent may, subject to the approval of the Minister, be issued to it, and when issued the consolidated company may exercise and shall enjoy all the rights and shall be subject to all the liabilities of other companies formed under this Part, and which the separate companies had and enjoyed or were subject or liable to before their union. R.S.O. 1937, c. 45, s. 47.

When
companies
may be
united.

50. Whenever the Lieutenant-Governor in Council deems it expedient for the public service he may declare any company formed under this Part to be dissolved, and may declare all the works of such company to be public works upon payment to such company of the then actual value of the works to be determined in accordance with *The Public Works Act*. R.S.O. 1937, c. 45, s. 48.

When the
Lieutenant-
Governor
in council
may declare
a company
dissolved.

Rev. Stat.,
c. 323.

51. Where a company incorporated under chapter 153 of the Revised Statutes of Ontario, 1877, or under chapter 68 of the Consolidated Statutes of Canada, 1859, applies for the issue of letters patent under *The Companies Act*, letters patent may, subject to the approval of the Minister, be issued conferring upon the company any of the powers authorized by this Part, and by such letters patent the term of existence of the company may be limited and the company shall be subject to this Part. R.S.O. 1937, c. 45, s. 49.

Letters
patent may
limit term
of existence
of certain
companies.
Rev. Stat.,
c. 59.

Extension
of existence
of company.

52.—(1) The term of existence of a company incorporated for a limited period may be extended for such a number of years as the Lieutenant-Governor in Council may, previous to the expiry of such period, direct.

Extension of
charter after
expiry of
term of
company's
existence.

(2) Where the term of existence of a company incorporated for a limited period has expired but the company has continued to carry on business and it appears to the Lieutenant-Governor in Council that the company has acted in good faith, the Lieutenant-Governor in Council, notwithstanding the expiry of such period, may, by supplementary letters patent, extend the term of existence of the company as from the date of the expiry, and thereupon the company shall be deemed to have continued in existence from such date and the works constructed by the company shall not be deemed to have become the property of His Majesty, but to have remained vested in the company for the period named in such supplementary letters patent.

Issue of
supplement-
ary letters
patent for
extensions
or improve-
ments.

(3) Where any extension or improvement of the works or any new works proposed to be undertaken are approved by the Minister, supplementary letters patent may be issued authorizing the construction of such extension or improvement or such new works as the case may be. R.S.O. 1937, c. 45, s. 50.

PART V

TOLLS

Interpre-
tation.

53. In this Part,

- (a) "operator" means owner or occupier of the works;
- (b) "works" means works as defined in Part IV which have been constructed. R.S.O. 1937, c. 45, s. 51.

Right
to tolls.

54. The operator may demand and receive the lawful tolls upon all timber passing through or over such works, and shall have free access to such timber for the purpose of measuring or counting it. R.S.O. 1937, c. 45, s. 52.

Publication
of schedule
of tolls.

55.—(1) In each year, prior to the 1st day of March, the operator shall publish once a week for four successive weeks in a newspaper published in the county or district in which the works are situate, a schedule of the tolls proposed to be charged together with a notice stating that on a day and hour named he will apply to a judge of such county or district for the approval of such tolls.

(2) Before publishing the schedule of tolls the operator shall apply to a judge of such county or district to fix the time for the hearing of the application so that it may be inserted in the notice, and the judge shall at the time so fixed hear the application and approve of the schedule of tolls after making such changes therein as he may think proper.

Time for hearing application.

(3) In fixing the tolls the judge shall have regard to and take into consideration the original cost of the works and improvements, the amount required to maintain them and to cover interest upon the original cost, as well as such other matters as under all the circumstances may be deemed just and equitable.

Basis on which tolls to be fixed.

(4) The judge may on the hearing require the production of all books of account of the operator for the purpose of ascertaining the state of the affairs of the operator, and may, if he thinks it necessary, appoint some person to inspect such books and make a report to him on the affairs of the operator for the purpose of determining the tolls which should be charged.

Production of books of account.

(5) The schedule of tolls as approved of by the judge shall be final and binding and there shall be no appeal from his decision.

No appeal.

(6) If the schedule of tolls be amended, then the tolls as so amended shall be published once a week for two successive weeks in a newspaper published in the county or district in which the works or improvements are situate.

Publication of tolls as approved.

(7) The operator shall forthwith after the schedule of tolls has been approved of by the judge send a copy of it certified by the judge to the Minister so that the same may be filed in the Department of Lands and Forests, and on failure to do so he shall be liable to a penalty of not more than \$20. R.S.O. 1937, c. 45, s. 53.

Copy of tolls to be sent to Department.

56.—(1) The operator may demand from the owner of any timber intended to be passed over or through any portion of the works, or from the person in charge of the timber, a written statement of the quantity of every kind of timber and of its destination, and of the sections of the works over or through which it is intended to pass, and if no written statement is given when required, or if a false statement is given, the whole of the timber, or such part of it as has been omitted by a false statement, shall be liable to double toll.

Demanding of owner statement of quantity of timber liable to toll.

When false estimate is given as to quantity liable to toll, extra tolls may be collected.

(2) If any owner or person in charge of such timber knowingly or wilfully returns a larger quantity than it is his intention to pass over or through the works the operator shall be entitled, in addition to any other remedy he may have, to collect tolls on the difference between the quantity so falsely estimated and the quantity actually passing over or through the works. R.S.O. 1937, c. 45, s. 54.

May sue for tolls.

57. If the tolls are not paid on demand they may be recovered by action. R.S.O. 1937, c. 45, s. 55.

Tolls to be apportioned to the extent of the works used.

58. If timber has come through or over part only of the works the owner of the timber shall be liable to pay tolls only for such sections of the whole works as he has made use of if, in the schedule of tolls, the works are divided into sections, and if not, to pay such a portion of the whole tolls as the distance the timber has come through or over the works bears to the whole distance for which the works extend. R.S.O. 1937, c. 45, s. 56.

Lien of operator for tolls.

59.—(1) The operator shall have a lien upon the timber passing through or over the works or improvements for the amount of the tolls, ranking next after the lien of the Crown for dues in respect of the timber.

Seizure of timber for tolls.

(2) If the tolls are not paid any justice of the peace having jurisdiction within or adjoining the locality in which the works are situate, upon the oath of the operator or of his agent being made that the just tolls have not been paid, shall issue a warrant for the seizure of the timber or so much of it as he may deem sufficient to satisfy the tolls.

Warrant to seize and proceedings thereon.

(3) The warrant may be directed to any constable or to any person sworn as a special constable for that purpose at the discretion of the justice, and it shall authorize the person to whom it is directed, if the tolls are not paid within 14 days from the date of the warrant, to sell the timber subject to any lien of the Crown for dues, and out of the proceeds to pay the tolls, together with the costs of the warrant and sale, rendering the surplus on demand to the owner.

When warrant not to be issued.

(4) A warrant shall not be issued after the expiration of one month from the time of the passage of the timber through or over any of the works. R.S.O. 1937, c. 45, s. 57.

Rules by operator.

60.—(1) The operator may make rules for regulating the safe and orderly floating of timber over or through the works; but no such rules shall have any force or effect until approved by the Minister who may alter or amend them before giving

his approval, and the Minister may revoke and cancel any rules so made and approved, and from time to time approve of new rules which the operator may make.

(2) Any person who resists or impedes the operator or any Penalty. of his servants in the floating of timber through or over any such works, or in carrying out any such rules or resists him or his servants who may require access to any timber to ascertain the just tolls thereon, or in any way molests him or his servants in the exercise of any rights conferred upon them by this Part, shall on summary conviction be liable to a penalty of not less than \$1 and not more than \$10.

(3) In any prosecution under this section the summons Service of summons. may be served either personally or by leaving a copy of it at the usual place of abode of the person named in it or with any adult person belonging to the raft to which the person named is attached.

(4) The penalties when collected shall be paid to the Right to penalty. operator for his own use. R.S.O. 1937, c. 45, s. 58.

PART VI

DRIVING OF TIMBER

61. Any person putting or causing to be put timber into any water for the purpose of floating it in, upon or down such water shall make adequate provision and put on a sufficient force of men to break, and shall make all reasonable endeavours to break, jams of the timber and clear the timber from the banks and shores of such water with reasonable dispatch, and shall run and drive the timber so as not unnecessarily to delay or hinder the removal, floating, running or driving of other timber or unnecessarily to obstruct the floating or navigation of such water. R.S.O. 1937, c. 45, s. 59. Duty of persons floating timber not to obstruct navigation.

62. If any person neglects to comply with section 61 it shall be lawful for any other person desiring to float, run or drive timber in, upon or down such water, and whose timber would be obstructed by such jams, to cause them to be broken and the timber to be cleared from the banks and shores of such water, and to be floated, run and driven in, upon or down the same. R.S.O. 1937, c. 45, s. 60. Right of other persons obstructed to clear.

63.—(1) The person who causes such jams to be broken or timber to be cleared, floated, run or driven, pursuant to section 62, shall do the same with reasonable economy and dispatch, and shall take reasonable care not to leave timber Duty and lien of persons clearing obstruction.

on the banks or shores, and shall have a lien upon the timber in the jam or upon the timber so cleared, floated, run or driven for the reasonable charges and expenses of breaking the jams and the clearing, floating, running, driving, booming and keeping possession of such timber, and may take and keep possession of the same or so much thereof as may be reasonably necessary to satisfy the amount of such charges and expenses pending the determination thereof by arbitration.

Idem.

(2) The person taking possession of timber under this section shall use all reasonable care not to take such timber beyond the place of its original destination, if known, but may securely boom and keep possession of the same at or above such place.

Notifying owner.

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and if satisfactory security is given for the amount of such charges and expenses possession of the timber shall be given up. R.S.O. 1937, c. 45, s. 61.

Provision when timber of several owners cannot conveniently be separated.

64. When timber of any person upon or in any water or the banks or shores of such water are so intermixed with timber of another person, that the same cannot be conveniently separated for the purpose of being floated in, upon or down such water, the several persons owning or controlling the intermixed timber shall respectively make adequate provision and put on a fair proportion of the men required to break jams of such intermixed timber, and to clear the same from the banks and shores of such water with reasonable dispatch, and to float, run and drive the same in, upon or down such water, and the costs and expenses thereof shall be borne by the parties in such proportions as they may agree upon, and in default of agreement as may be determined by arbitration. R.S.O. 1937, c. 45, s. 62.

Provision when owner of any portion of timber is in default.

65. If any person neglects to comply with section 64 it shall be lawful for any other person whose timber is intermixed to put on a sufficient number of men to supply the deficiency and break jams of such intermixed timber and to clear the same from the banks and shores of such water, and to float, run and drive all such intermixed timber in, upon or down such water. R.S.O. 1937, c. 45, s. 63.

Duty and lien of person supplying deficiency.

66.—(1) The person supplying such deficiency and causing such jams to be broken, or such intermixed timber to be cleared, floated, run or driven, pursuant to section 65, shall do the same with reasonable economy and dispatch, and shall take reasonable care not to leave timber on the banks or

shores, and shall have a lien upon the timber owned or controlled by the person guilty of such neglect for a fair proportion of the charges and expenses of breaking the jams, and the clearing, floating, running, driving, booming, and keeping possession of such intermixed timber, and may take and keep possession of such timber or so much thereof as may be reasonably necessary to satisfy the amount of such fair proportion of such charges and expenses pending the determination thereof by arbitration.

(2) The person taking possession of timber under this section shall use all reasonable care not to take such timber beyond the place of its original destination, if known, but may securely boom and keep possession of the same at or above such place. Duty of holder.

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and if satisfactory security is given for the amount of such proportion of charges and expenses possession of the timber shall be given up. R.S.O. 1937, c. 45, s. 64. Notifying owner.

67. Where timber of any person upon or in any water or the banks or shores of such water is intermixed with timber of another person any of the persons whose timber is intermixed may at any time during the drive require his timber to be separated from the other timber at some suitable and convenient place, and after such separation he shall secure the same at his own cost and expense in such manner as to allow free passage for such other timber; but when any timber reaches its place of original destination, if known, so intermixed the same shall be there separated from the other timber, and after such separation each owner shall secure the same at his own cost and expense. R.S.O. 1937, c. 45, s. 65. Right of owner to separation of timber.

68. The several persons owning or controlling the intermixed timber shall respectively make adequate provision and put on a fair proportion of the men required to make the separation and the cost and expense of such separation shall be borne by the parties in such proportions as they may agree upon, and in default of agreement as may be determined by arbitration. R.S.O. 1937, c. 45, s. 66. Expenses of separation to be shared.

69.—(1) If any person neglects to comply with section 68 it shall be lawful for any other person whose timber is intermixed to put on a sufficient number of men to supply the deficiency, and the timber owned or controlled by the person guilty of such neglect shall be subject to a lien in favour of the person supplying the deficiency for a fair proportion of When owner does not provide for his share of work.

the charges and expenses of making the separation, and for the reasonable charges and expenses of booming and keeping possession, and such person may take and keep possession of such timber or so much thereof as may be reasonably necessary to satisfy the amount of such fair proportion of charges and expenses pending determination of the amount by arbitration.

Duty of holder.

(2) The person taking possession of timber under this section shall use all reasonable care not to take such timber beyond the place of its original destination, if known, but may securely boom and keep possession of the same at or above such place.

Notifying owner.

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and if satisfactory security is given for the amount of such proportion of charges and expenses possession of the timber shall be given up. R.S.O. 1937, c. 45, s. 67.

Form of security.

70. The security referred to in sections 63, 66 and 69 may be by bond (Form 1) or by deposit of money, or in such other way as the parties may agree upon. R.S.O. 1937, c. 45, s. 68.

Damages when timber wrongfully detained.

71. If it is determined by arbitration that any person acting under the assumed authority of this Part has without just cause taken possession of or detained or caused to be taken possession of or detained timber of another person, or has after offer of security which the arbitrator may think should have been accepted, detained such timber, or has through want of reasonable care left timber of another person on the banks or shores of any lake or river, or has taken timber of another person beyond the place of its original destination contrary to sections 63, 66 and 69, such first-mentioned person shall pay to such last-mentioned person such damages as the arbitrator may determine. R.S.O. 1937, c. 45, s. 69.

Lien under ss. 63, 66 and 69, subject to lien for tolls.

72. The lien given by sections 63, 66 and 69 shall be subject to the lien, if any, of any person for tolls for the use of any works or improvements made use of in running or driving timber. R.S.O. 1937, c. 45, s. 70.

Rights of Crown not affected.

73. Nothing in this Part shall affect the lien or rights of the Crown upon or in respect of any timber. R.S.O. 1937, c. 45, s. 71.

Arbitration.

74. All claims, disputes and differences arising from any act or omission under this Part or by reason of failure to perform any duty or obligation imposed by this Part shall be

determined by arbitration and not by action. R.S.O. 1937, c. 45, s. 72.

75. The person claiming that another person has not complied with this Part, or claiming payment of any charges or expenses under this Part, or claiming a lien upon any timber, or claiming damages under section 71, shall give to such other person notice in writing stating the substance and amount of the claims made. R.S.O. 1937, c. 45, s. 73. Notice of claim.

76. The person on whom a claim is made, at any time before the arbitration is entered upon or with leave of the arbitrator during the arbitration, may give the claimant notice in writing by way of counterclaim, stating the substance of any claim arising under this Part which such person may have against the claimant, and such counterclaim, unless barred under section 79 shall be determined in the arbitration. R.S.O. 1937, c. 45, s. 74. Counter-claim.

77.—(1) The person having a lien upon timber by virtue of this Part may with the approval of the arbitrator sell the timber or a sufficient part thereof in order to realize the amount of the lien, and of the costs, charges and expenses connected with the sale. Sale by person having lien

(2) The arbitrator shall determine either by the award or by a separate document the time, place and manner of the sale, and may from time to time give directions in writing respecting the sale, and the realization of the lien and of the costs, charges and expenses connected therewith. R.S.O. 1937, c. 45, s. 75. Direction by arbitrator.

78. The award and directions in writing of the arbitrator shall be final and binding and shall not be subject to appeal. R.S.O. 1937, c. 45, s. 76. Finality of award.

79.—(1) All claims arising under this Part shall be made within one year after the same have arisen otherwise they shall be barred; but in the event of such claims arising between the same parties in two successive seasons the same shall be so made within one year after the last of such claims has arisen. Limitation of time for making claims.

(2) Where any claim is submitted to arbitration and a counterclaim is set up such counterclaim shall be deemed to have been brought at the date of the service of the claim. R.S.O. 1937, c. 45, s. 77. Counter-claim.

Exemption
of territory
from
operation
of Part.

80. The Lieutenant-Governor in Council may from time to time declare that any part of Ontario or any water therein shall, until further declaration, be exempt from the operation of this Part, and thereupon the same shall be exempt accordingly. 1946, c. 89, s. 26 (6).

Bringing
exempted
territory
again under
Part.

81. Any part of Ontario or any water therein exempted by declaration from the operation of this Part may, by declaration, be again brought within its operation until further declaration and so on from time to time. 1946, c. 89, s. 26 (7).

PART VII

WATER PRIVILEGES

Application.

82. This Part shall be subject to the provisions of Parts I and II. R.S.O. 1937, c. 45, s. 80.

Interpre-
tation.

83. In this Part, "occupied water privilege" means a mill privilege, or water power, which has been or is in use for mechanical, manufacturing, milling or hydraulic purposes, or for the use of which for any of such purposes the necessary works are *bona fide* in course of construction. R.S.O. 1937, c. 45, s. 81.

Protection
of occupied
water
privilege.

84. Subject to section 89, an occupied water privilege shall not be in any manner interfered with or encroached upon under the authority of this Part without the consent of the owner. R.S.O. 1937, c. 45, s. 82.

Right of
owner of
water
privilege to
enter on and
survey lands.

85.—(1) A person desiring to use or improve a water privilege, of which or a part of which he is the owner or legal occupant, for any mechanical, manufacturing, milling or hydraulic purposes by erecting a dam and creating a pond of water, increasing the head of water in any existing pond or extending the area thereof, diverting the waters of any stream, pond or lake into any other channel, constructing any raceway or other erection or work which he may require in connection with the improvement and use of the privilege, or by altering, renewing, extending, improving, repairing or maintaining any such dam, raceway, erection or work, or any part thereof, shall have the right to enter upon any land which he may deem necessary to be examined and to make an examination and survey thereof, doing no unnecessary damage and making compensation for the actual damage done.

(2) If, upon an application to a judge of the county or district court, as hereinafter provided, such person obtains authority he may take, acquire, hold and use such portions of the land so examined or such rights over or in respect thereof as the judge may deem necessary for the completion, improvement or maintenance of the water privilege and works in connection therewith. Acquisition of lands for water privilege.

(3) The building of a transmission line for the transmission of electrical power or energy generated by an occupied water privilege shall be deemed to be a use or improvement of a water privilege within the meaning of this section. R.S.O. 1937, c. 45, s. 83. Transmission line.

86.—(1) A person desiring to exercise the powers hereinbefore mentioned, or any of them, shall cause, Proceedings.

(a) surveys and levels to be made and taken of the land sought to be taken, used or otherwise affected, and a map or plan thereof to be prepared;

(b) a statement to be prepared giving,

(i) a general description of the land to be taken and of the powers intended to be exercised with regard to any land, describing it,

(ii) the names of the owners and occupiers of the land, so far as they can be ascertained, and

(iii) everything necessary for the right understanding of the map or plan, including a registrar's certified abstract of the titles to all the land to be affected by the application;

(c) the map or plan and the statement to be filed in the office of the clerk of the county or district court of the county or district wherein the land or part thereof is situate.

(2) He may then apply to the judge of such county or district court for an order empowering him to exercise the powers or such of them as he may desire. R.S.O. 1937, c. 45, s. 84. Application to judge.

87. In addition to any other notice which the judge may direct to be given, public notice of the application stating the time and place when and where the same is to be heard, shall be inserted for such period as the judge may direct in a newspaper published in the county or district or one of the counties or districts where the proposed works are to be constructed or any of the land affected is situate. R.S.O. 1937, c. 45, s. 85. Public notice of application.

Order, when deemed proper and just.

88. If the judge is of the opinion that the allowance of the application in whole or in part is in the public interest and is proper and just under all the circumstances of the case he may make an order empowering the applicant to exercise such of the powers as the judge may deem expedient, for such time and on such terms and conditions as he may determine, and the land affected shall be described in the order. R.S.O. 1937, c. 45, s. 86.

Order as to privilege not in actual use.

89. Where evidence is produced which satisfies the judge that the owner of a water privilege which has been but is not then in use for any of the purposes mentioned in subsection 1 of section 85 is holding the same with the intention of again using it for mechanical, manufacturing, milling or hydraulic purposes the judge may make an order fixing the time within which the necessary works for the actual use of such water privilege shall be constructed and actually used, and, unless such evidence is produced or the terms of such order are complied with, the water privilege shall not be deemed to be an occupied water privilege within the meaning of this Part. R.S.O. 1937, c. 45, s. 87.

Case of two or more claimants.

90. Where two or more persons claim to exercise the powers conferred by this Part in respect of the same water privilege, or any part thereof, the judge may impose such terms as he may deem just, and may also limit a time within which the person whose application he allows shall construct the necessary works and actually use such water privilege. R.S.O. 1937, c. 45, s. 88.

Limit of size of ponds.

91. No pond shall be authorized to be made or enlarged so as to exceed 20 acres in extent unless the judge for special reasons otherwise directs. R.S.O. 1937, c. 45, s. 89.

What to be stated in order.

92.—(1) The judge shall in the order state the height to which the water may be raised and fix the extent of the pond.

Compensation for injury.

(2) The judge shall also assess the sum to be paid as the value of the land to be taken or used or of the powers to be exercised, and the damages, if any, to be paid as compensation by the applicant for any injury which may be occasioned by the proposed works, and may make such order as to costs as he may deem just.

Scale and taxation.

(3) The costs shall be the same as in ordinary proceedings in the county court and shall be taxed by the clerk. R.S.O. 1937, c. 45, s. 90.

93.—(1) The sums so assessed and the costs shall be paid to the persons entitled thereto or into the Supreme Court as the judge may direct, before the powers or any of them are exercised and within 60 days after the order is made. Payment of amount awarded.

(2) If the same are not so paid the order may be enforced under *The Judges' Orders Enforcement Act*, or, at the option of any of the persons entitled to receive a sum so assessed, may, on application to the judge, be set aside and vacated as to him, and in such case the judge may make such order as to the costs of the proceedings and of the application as he may deem just. R.S.O. 1937, c. 45, s. 91. Enforcing or setting aside order. Rev. Stat., c. 189.

94. Upon the payment of the sums assessed and costs the applicant shall be entitled to a conveyance, to be settled by the judge in case of a dispute, of the land or rights mentioned in the order in respect of which payment is so made, and shall be further entitled to have and exercise such of the powers mentioned in section 85 as he is authorized by the order to exercise. R.S.O. 1937, c. 45, s. 92. Conveyance of land.

95. For the purpose of registration the order shall be deemed a judgment of the court to which the judge belongs. R.S.O. 1937, c. 45, s. 93. Registration of judge's order.

96. The Judge shall have all the powers possessed by him or by a county or district court in an action. R.S.O. 1937, c. 45, s. 94. Judge's powers.

97. The Judge shall be entitled for his services to the like fees as are allowed to arbitrators. R.S.O. 1937, c. 45, s. 95. Judge's fees.

98.—(1) By leave of a judge of the Supreme Court an appeal shall lie from the order of the judge on any application under this Part to the Court of Appeal. Appeal from county judge.

(2) On such appeal the decision of the judge upon questions of fact and all other questions shall be open to review. Review of decision.

(3) The application for leave to appeal shall be made within 10 days from the day on which the order appealed from is made, or within such further time as a judge of the Supreme Court may allow. Application for leave to appeal.

(4) The judge to whom the application is made shall determine the time within which the appeal shall be set down to be heard, the persons upon whom notice of the appeal shall be served and all such other matters as he may deem Terms.

necessary for the most speedy and least expensive determination of the appeal.

Effect of non-compliance with conditions of appeal.

(5) If the appeal is not set down to be heard within the time limited, or if any other condition imposed is not complied with, the appeal shall, unless otherwise ordered by a judge of the Supreme Court, be deemed to have been abandoned.

Practice on appeal.

(6) The practice and procedure upon the appeal, except so far as is herein, or by the judge to whom the application for leave is made, otherwise provided, shall be the same as upon an appeal from a county court. R.S.O. 1937, c. 45, s. 96.

FORM 1

(Section 70)

Know all men by these presents that we (*here insert names of obligors, being the owner of the timber and at least one sufficient surety or, if the signature of the owner cannot be obtained without unreasonable delay, then being two sureties*)..... are held and firmly bound unto A. B. (*here insert the name of the person claiming the lien*) in the penal sum of (*double the amount of the claim*) \$....., to be paid to the said A. B., his executors, administrators and assigns, for which payment well and truly to be made we and each of us, bind ourselves, and each of us our and each of our executors and administrators jointly and severally, firmly by these presents, sealed with our seals, and signed by us this....., 19.....

Whereas the said A. B., claiming to act under the authority of Part VI of *The Lakes and Rivers Improvement Act* has taken possession of certain (timber) owned or controlled by.....and claims a lien thereon for the sum of \$....., under the provisions of section 63, 66 or 69 (*as the case may be*) of the said Act.

And whereas this bond is given as security for payment to the said A. B., of such sum as he may be held entitled to by arbitration pursuant to the said Act, and of any costs and expenses of the arbitration which may become payable to him.

Now the condition of the above obligation is such that if the said....., his executors or administrators to pay to the said A. B., his executors, administrators or assigns, such sum as may be determined by arbitration pursuant to the said Act, to be payable to the said A. B., his executors, administrators or assigns for charges and expenses, and also such sum as may become payable to the said A. B., his executors, administrators or assigns, for costs and expenses of such arbitration, then the above obligation to be void, otherwise to remain in full force.

C. D. (SEAL)
F. G. (SEAL)

Signed, sealed and delivered }
in the presence of X.Y. }

CHAPTER 196

The Land Surveyors Act

1. In this Act,

Interpre-
tation.

- (a) "Association" means the Association of Ontario Land Surveyors;
- (b) "board" means board of examiners of the Association;
- (c) "council" means the council of management of the Association;
- (d) "Minister" means Minister of Lands and Forests;
- (e) "surveyor" means a person who practises the profession of land surveyor, or a person, other than an employee of an Ontario land surveyor, who for gain either by himself or by some other person surveys, establishes, locates or defines any boundary, limit or angle of any land, location, claim, limit, common, road, street, lane, way, gore, reserve, concession, section, block, lot, village, town, city, township or other parcel of land or division or property. R.S.O. 1937, c. 231, s. 1, *amended*.

2.—(1) No person shall act as a surveyor in Ontario unless authorized to practise as a land surveyor according to the provisions of this Act, or so authorized before the passing thereof according to the laws then in force, and unless registered under this Act. Who may act as a surveyor.

(2) Every person who contravenes this section shall be guilty of an offence and liable to a penalty of \$40. R.S.O. 1937, c. 231, s. 2. Penalty.

3.—(1) The Association of Ontario Land Surveyors is hereby continued and all persons who are now members of the Association shall continue to be members thereof subject to the by-laws of the Association and the provisions of this Act. Association continued.

(2) All persons duly authorized to practise as surveyors shall, upon becoming duly registered as hereinafter provided, become members of the Association. R.S.O. 1937, c. 231, s. 3. New members.

4. All fines and fees payable under this Act or under any by-law of the Association shall belong to the Association. R.S.O. 1937, c. 231, s. 3. Fines and fees.

Powers as to
real estate.

5. The Association may purchase, take and possess for the purposes of the Association, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate. R.S.O. 1937, c. 231, s. 5.

Council of
management.

6.—(1) There shall be a council of management of the Association, consisting of the Minister or his appointee, the Surveyor-General of Ontario, the president and the vice-president of the Association, and six other elective members to be elected and hold office as hereinafter provided. R.S.O. 1937, c. 231, s. 6 (1); 1938, c. 37, s. 12.

Chairman
and officers.

(2) The council shall elect annually one of its members as chairman, and may appoint from among the members of the Association such other officers as may be deemed necessary for carrying out the objects of this Act, and such appointed officers shall hold office during the pleasure of the council. R.S.O. 1937, c. 231, s. 6 (2).

Invest-
ments.

7. The council may invest, in the name of the Association, any moneys of the Association in such securities as trustees may properly invest in, and the income derived therefrom shall form part of the ordinary income of the Association. R.S.O. 1937, c. 231, s. 7.

By-laws.

8.—(1) The Association may pass by-laws for,
(a) the government, discipline and honour of its members;
(b) the management of its property;
(c) the examination and admission of candidates for the study or practice of the profession;
(d) all such other purposes as may be necessary for carrying out the objects of the Association.

Ratification.

(2) All by-laws shall be passed by the council and shall be ratified by the Association at the next annual general meeting or at a special general meeting called for the purpose. R.S.O. 1937, c. 231, s. 8.

Annual
general
meeting.

9.—(1) The annual general meeting of the Association shall be held in the City of Toronto on the third Tuesday of February in each year at such place as the council may appoint.

Special
general
meeting.

(2) Upon the written request of any 10 members of the Association in good standing or of the council, the president, or in his absence the vice-president, may call a special general

meeting to be held in the City of Toronto at a time not more than 30 days after the receipt of such request.

(3) Notice of any such meeting shall be given by the secretary-treasurer to each member of the Association by letter posted to his registered address at least 14 days before such meeting. R.S.O. 1937, c. 231, s. 9. Notice.

10.—(1) The members of the Association shall elect annually from their number by sealed ballot (Form 1) the president, vice-president, secretary-treasurer and two auditors who shall hold office for one year from the termination of the annual general meeting, or until their successors in office have been elected, and two members of the council who shall hold office for three years from the termination of the annual general meeting, or until their successors in office have been elected. Election of president and officers of the Association.

(2) No person shall be eligible for election to any office or to the council or qualified to fill any vacancy thereon or for appointment by the council to any office unless his fees have been paid and he is duly qualified under this Act and the by-laws of the Association. R.S.O. 1937, c. 231, s. 10. Qualification.

11.—(1) A nominating committee of five members of the Association in good standing other than members of the council shall be elected by ballot at each annual general meeting to hold office until the next annual general meeting and it shall be the duty of the nominating committee to nominate before the 1st day of December in each year at least as many eligible members for each position as are required to be elected in accordance with section 10. Nominating committee.

(2) The presiding officer at the meeting at which the nominating committee is elected shall appoint two scrutineers to count the votes cast for members of the nominating committee, and he shall have the casting vote in the case of a tie, and shall appoint one of the members elected to act as chairman and convener of the committee. R.S.O. 1937, c. 231, s. 11. Scrutineers and casting vote.

12.—(1) The chairman of the nominating committee shall forthwith after the 30th day of November in each year forward to the secretary-treasurer, by registered mail, the list of persons nominated and the secretary-treasurer shall on or before the 10th day of December in that year mail a copy of the list to each member of the Association at his registered address. Nominations.

Addition of names when required.

(2) Any 10 members of the Association in good standing may, by registered letter delivered to the secretary-treasurer at his office on or before the 31st day of December, require the secretary to add to the list of persons nominated the name or names of any other eligible members, and the names of the members so added, with the names of the members chosen by the nominating committee, shall be placed by the secretary on the ballot paper (Form 1). R.S.O. 1937, c. 231, s. 12.

Distribution and return of ballots.

13.—(1) The ballot papers shall be mailed by the secretary-treasurer to each member of the Association at his registered address at least 14 days before the annual meeting and shall be returned to the secretary-treasurer in a sealed envelope not later than ten o'clock in the forenoon of the day prior to the annual general meeting.

Scrutineers.

(2) Two scrutineers shall be appointed by the president to examine and count the votes.

Counting ballots.

(3) The ballot papers shall on the day prior to the annual meeting be opened by the secretary-treasurer in the presence of the scrutineers who shall examine and count the votes cast for the various candidates and keep a record thereof in a book provided for that purpose by the council. R.S.O. 1937, c. 231, s. 13.

Qualification of voters.

14.—(1) The persons qualified to vote shall be such persons as are members of the Association and have paid all fees due from them to the Association.

Where voting paper has too many names.

(2) In the event of an elector placing more than the required number of names upon the voting paper for members of the council the first names only not exceeding the required number shall be counted.

Who may be present at counting of votes.

(3) Any person entitled to vote at the election may be present at the counting of the votes. R.S.O. 1937, c. 231, s. 14.

Result of elections.

15.—(1) The qualified persons who have the highest number of votes shall be declared elected.

Equality of votes.

(2) In the case of equality of votes between two or more persons which leaves the election of one or more officers or members of the council undecided, the scrutineers shall forthwith put into a ballot box a number of papers with the names of the candidates respectively having such equality of votes written thereon, one for each candidate, and the secretary-treasurer shall draw from the ballot box, in the presence of the scrutineers, one or more of the papers sufficient to make

up the required number, and the person or persons whose name or names are upon the papers so drawn shall be the officer or officers or the member or members of the council, as the case may be. R.S.O. 1937, c. 231, s. 15.

16. Upon the completion of the counting of the votes the secretary-treasurer shall report the result of the election in writing signed by himself and the scrutineers to the president who shall announce the same at the annual general meeting. R.S.O. 1937, c. 231, s. 16. Result of election to be reported.

17. In the case of the resignation, death or dismissal of the president, vice-president, or any elective member of the council the other members of the council shall have power to fill any vacancy so caused, and the person so appointed shall hold office for the unexpired portion of the term. R.S.O. 1937, c. 231, s. 17. Vacancies.

18. In case of doubt or dispute as to who has been elected or as to the legality of the election, the duly elected officers and members shall be a committee, to inquire and decide the doubt or dispute, and the persons whom they decide to have been elected shall be deemed to have been duly elected and if the election is found to have been illegal the committee shall order a new election. R.S.O. 1937, c. 231, s. 18. Disputed elections.

19.—(1) There shall be a board of examiners for the examination of candidates as hereinafter provided. Board of examiners.

(2) The board shall consist of the chairman of the council, the secretary-treasurer, four other members of the Association to be appointed by the council and two to be appointed by the Lieutenant-Governor in Council. Constitution of board.

(3) The six members to be so appointed shall hold office for three years. Term of office.

(4) In the case of resignation, death or inability to act of any member of the board, the Lieutenant-Governor in Council if such member was appointed by him, and the council if such member was appointed by it, shall appoint a member of the Association to be a member of the board for the unexpired portion of the term. To supply vacancies.

(5) The chairman of the council shall be the chairman of the board and three members of the board shall form a quorum. Chairman, quorum.

(6) The council may also appoint competent persons to assist the board in any of the subjects of examination, and Examiners.

may fix the expenses and fees to be paid to any of the examiners, subject to the restrictions hereinafter contained in respect of payments to members of the board.

Oath of
examiner.

(7) Each member of the board shall take and subscribe the following oath:

I,.....of.....,
having been appointed a member of the board of examiners
under *The Land Surveyors Act*, do sincerely promise and swear
that I will faithfully discharge the duties of such office without
favour, affection or partiality. So help me God.

A. B.

Sworn before me at.....
this.....day of....., 19.....

R.S.O. 1937, c. 231, s. 19.

Meeting,
when and
where held.

20.—(1) The board shall meet in the City of Toronto on the first Monday in February in every year, and may adjourn such meeting from time to time.

Payment of
examiners.

(2) The council shall for each day's attendance pay out of the funds of the Association to each member of the board who attends any examinations such sum, not less than \$6 and not more than \$8, as the council may by by-law determine, and his travelling expenses. R.S.O. 1937, c. 231, s. 20.

Certificate
of quali-
fication,

21. The board shall grant a certificate (Form 2) authorizing to practise as a surveyor, any person who,

age;

(a) has attained the age of 21 years;

apprentice-
ship;

(b) has served faithfully and regularly for three years under an instrument in writing duly executed before two witnesses, as a student to a surveyor in actual practice and has received from such surveyor a certificate of his having so served or proves to the satisfaction of the board that he has so served or has been wholly or partly exempted from such apprenticeship by the board in accordance with the provisions hereinafter in that behalf;

inter-
mediate
examination;

(c) has passed at least six months prior to presenting himself for the final examination, an intermediate examination in such subjects as the by-laws of the Association may set out or such part thereof as specified by the board in accordance with the provisions hereinafter in that behalf;

final
examination;

(d) has passed a final examination not more than six months prior to the termination of his apprenticeship, if any, in such subjects as the by-laws of the

Association may require or such part thereof as specified by the board in accordance with the provisions hereinafter in that behalf;

- (e) has paid all fees due from him to the Association in payments; accordance with section 29;
- (f) has produced if required by the board satisfactory references; evidence as to probity and sobriety;
- (g) has entered into a joint and several bond to His Majesty in the sum of \$1,000, conditioned for the faithful performance of the duties of his office to be deposited in the office of the Treasurer of Ontario and ensuring to the benefit of any person sustaining damage by breach of the conditions thereof with two sufficient sureties to the satisfaction of the board or the chairman or secretary-treasurer thereof;
- (h) has provided himself with a properly certified standard measure; standard measure of length;
- (i) has taken and subscribed the oath of allegiance and the following oath of office before the chairman of oaths of office and allegiance. the board or a member thereof deputed by the board for that purpose which said oaths of allegiance and office shall be deposited in the office of the Provincial Secretary:

I,, do solemnly swear that I will faithfully discharge the duties of an Ontario Land Surveyor according to the law, without favour, affection or partiality.

R.S.O. 1937, c. 231, s. 21.

22. No person shall be apprenticed to a surveyor until he has produced to the secretary-treasurer certificates of pass matriculation and honour matriculation in mathematics both as prescribed by the Department of Education or such other evidence of educational standing as is in the opinion of the board equivalent to the above. Who may be apprenticed. R.S.O. 1937, c. 231, s. 22.

23. Notwithstanding anything contained in section 21, Exemption from apprenticeship.

- (a) any person who is a graduate of the Royal Military College at Kingston or a graduate of the University of Toronto, McGill University at Montreal, Queen's University at Kingston, or the University of Western Ontario at London in civil or mining engineering, or of the Faculty of Arts in mathematics or in mathematics and physics, or a graduate in forestry of the University of Toronto or a graduate of such other educational

institution as may be approved by the board in a course which in the opinion of the board is equivalent to one of the courses hereinbefore mentioned, shall only be bound to serve under articles with a practising surveyor, duly filed as required by section 27, during 12 consecutive months of active practice; and

- (b) any person who has been on active service in the naval, military or air forces of His Majesty or any of His Majesty's allies shall only be bound to serve under such articles for such period of time as the board may deem necessary after considering his training or experience in surveying or engineering prior to or during such service in the forces. 1946, c. 45, s. 1.

Exemption when qualified elsewhere.

24. The board shall have power to grant exemption from the whole or part of the term of apprenticeship and from the whole or parts of the intermediate and final examinations in the case of a person who has attained the age of 21 years and has practised as a surveyor in any of His Majesty's Dominions other than the Province of Ontario, and has satisfied the board that the qualifications for practising required in such Dominion are similar to those required in Ontario and has produced to the board his certificate or diploma; provided that the same or similar privileges are granted in such Dominion to Ontario land surveyors. R.S.O. 1937, c. 231, s. 24.

Provision in case of death, etc., of employer.

25. If a surveyor dies or leaves Ontario, or is suspended, dismissed or ceases to practise, his apprentice may complete his term of apprenticeship under an instrument in writing, with any registered surveyor in actual practice. R.S.O. 1937, c. 231, s. 25.

Transfer of apprenticeship.

26. A surveyor may, with the consent of the apprentice by an instrument in writing, transfer him to another registered surveyor in actual practice with whom he may serve the remainder of the term of his apprenticeship. R.S.O. 1937, c. 231, s. 26.

Registration of apprenticeship agreements.

27. Every instrument being an agreement of apprenticeship to a surveyor shall be transmitted to the secretary-treasurer within two months of the date thereof for approval and registration and if approved shall be registered by the secretary-treasurer in his office and notice of the said registration forwarded by mail to the apprentice. R.S.O. 1937, c. 231, s. 27.

28. Every person desiring to be examined by the board shall give notice thereof in writing to the secretary-treasurer at least one month before the meeting of the board. R.S.O. 1937, c. 231, s. 28. Notice by candidates for examination.

29.—(1) The following fees shall be paid to the secretary-treasurer: Fees.

- (a) for the registration of articles of apprenticeship.....\$10
- (b) for the registration of the transfer of articles of apprenticeship..... 5
- (c) by each candidate for examination with his notice to present himself thereat..... 1
- (d) by each candidate presenting himself for the intermediate examination..... 20
- (e) by each candidate presenting himself for the final examination..... 40
- (f) for intermediate certificate..... 1
- (g) for final certificate authorizing to practise... 10
- (h) for registration as a surveyor in active practice 1
- (i) for official notice of registration in *The Ontario Gazette*..... 1

(2) Where the annual fees of a member remain unpaid for more than six years and the council is unable to grant total exemption for such period on the ground of extenuating circumstances, the member shall be suspended from membership in the Association until such fees are paid in full or in such part as the council may deem just. R.S.O. 1937, c. 231, s. 29. Suspension for non-payment of fees.

30.—(1) The secretary-treasurer shall make and keep a correct register of all persons entitled to be registered under this Act, and shall enter opposite the name of a registered person who has died, a statement of the fact and shall make necessary alterations in the addresses of persons registered, and subject to this Act shall keep the register in accordance with the by-laws of the Association and the orders and regulations of the council. How register to be kept.

(2) A registered surveyor desiring to give up practice may have his name removed from the register upon giving written notice to the secretary-treasurer of such desire and paying all fees due from him to the Association, and thereafter he shall not be liable to the Association for any annual or other fees, and may, upon like notice of his intention to resume practice and paying the annual fee for the year in which such notice is given, be again registered. Retirement from practice.

Rectification
of entries.

(3) No name shall be entered in the register except of persons authorized by this Act to be registered nor unless the secretary-treasurer is satisfied by proper evidence that the person claiming to be entitled to be registered is so entitled and any appeal from his decision shall be decided by the council, and any entry which is proved to the satisfaction of the council to have been fraudulently or incorrectly made shall be erased from or amended in the register by order of the council.

Exemption
from
annual fees.

(4) The Association may provide that any surveyor who has been in the actual practice of his profession for a period of 35 years or more and was during the entire period a duly qualified surveyor may be exempted from payment of the annual membership fee. R.S.O. 1937, c. 231, s. 30.

Annual
register.

31.—(1) The secretary-treasurer shall in every year cause to be printed and kept for inspection in his office an annual register in which shall be printed in alphabetical order the names and addresses of all persons authorized to practise as surveyors on the 1st day of June of that year.

Evidence of
registration.

(2) A copy of the annual register so printed shall be evidence in all courts and for all persons that the persons therein mentioned are registered according to this Act.

Omission of
name from
copy.

(3) In the case of any person whose name does not appear in such copy a certified copy under the hand of the secretary-treasurer of the entry of the name of such person in the register shall be like evidence that such person is registered under this Act. R.S.O. 1937, c. 231, s. 31.

Penalty for
improper
entry.

32. If the secretary-treasurer wilfully makes or causes or allows to be made any falsification in any matter relating to the register he shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$50. R.S.O. 1937, c. 231, s. 32.

Penalty for
procuring
entry by
fraud.

33. Any person who wilfully procures or attempts to procure registration under this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either verbally or in writing, shall be guilty of an offence and liable to a penalty of not less than \$20 and not more than \$50 and the council may remove the name of the offender from the register. R.S.O. 1937, c. 231, s. 33.

Right to
use title.

34.—(1) A person registered under this Act shall be entitled to take or use the name or title of "Ontario Land Surveyor"

and unless so registered no person shall be entitled to take or use the name or title of "Ontario Land Surveyor" either alone or in combination with any other word or words, or any name, title or description implying that he is registered under this Act.

(2) Every person who contravenes this section shall be ^{Penalty.} guilty of an offence and liable to a penalty of not more than \$20 for the first offence and not more than \$50 for each subsequent offence. R.S.O. 1937, c. 231, s. 34.

35. Every surveyor summoned to attend any civil or ^{Witness} criminal court for the purpose of giving evidence in his ^{fees.} professional capacity or in consequence of any professional service rendered by him, shall be entitled to \$5 for each day he so attends, in addition to his travelling expenses, to be taxed and paid in the manner by law provided with regard to the payment of witnesses attending such court. R.S.O. 1937, c. 231, s. 35.

36.—(1) Where after due inquiry by a committee of the Association, appointed pursuant to its by-laws, a surveyor ^{Dismissal or} has been found to have been guilty of gross negligence or of ^{suspension} corruption in the execution of the duties of his office, or of ^{of members.} professional misconduct or of conduct apt to bring the profession into disrepute, or where a surveyor has been convicted in Canada or elsewhere of an indictable offence, other than a political offence committed out of His Majesty's Dominions, the council by order may reprimand or censure such surveyor or may suspend him from membership and from registration for such time not exceeding one year as the council may deem proper, or may expel him from membership and from registration.

(2) Unless a judge of the Supreme Court otherwise orders, a surveyor who has been ordered by the council to be ^{Not to act} suspended or expelled from membership and from registration ^{as surveyor} shall not, pending the disposition of any appeal made by ^{during} him, act as a surveyor while so ordered to be suspended or ^{appeal.} expelled.

(3) When an order has been made by the council suspending ^{Appeal.} or expelling a surveyor from membership, the surveyor may appeal to a judge of the Supreme Court from the order.

(4) The appeal shall be by notice of motion served upon ^{Mode.} the president, vice-president or secretary-treasurer of the Association within 15 days after service upon the surveyor of a copy of the decision appealed from, or within such further time as may be allowed by a judge of the Supreme Court.

Hearing.

(5) The judge may hear the appeal on the transcript of the evidence taken before the committee of the Association, or upon such further evidence as he may permit, or the judge may rehear the case, or he may remit the case for rehearing on such evidence as he may indicate.

Judge's order.

(6) The judge may affirm, vary or rescind the order of the council or make such other order as he deems just.

Appeal.

(7) By leave of a judge of the Court of Appeal given on application made within 15 days after the decision complained of, there shall be an appeal to the Court of Appeal from any decision of a judge made under subsection 6.

Restoration of name.

(8) The council may at any time direct the secretary-treasurer to restore to the register, upon such terms and conditions as may be determined by the council, any entry or the name of any person removed therefrom. R.S.O. 1937, c. 231, s. 36.

Attendance of witnesses.

37. On any inquiry concerning the election, dismissal, suspension or restoration of any member a subpoena under the hand of the president or of the vice-president, or of any two members of the council, for the attendance of a witness before the council, shall have all the force of a subpoena issued by the Supreme Court, and any witness not attending in obedience thereto shall be liable to attachment in the Supreme Court. R.S.O. 1937, c. 231, s. 37.

Recovery of fees and penalties.

38.—(1) All fees payable under this Act may be recovered as ordinary debts due the Association and all penalties imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act*.

Rev. Stat. c. 379.

Application of penalties.

(2) All penalties recovered under this Act shall immediately upon the recovery thereof be paid over by the convicting justice to the secretary-treasurer.

Apportionment of penalty.

(3) Any person may be prosecutor or complainant under this Act, and the council may allot such portion of the penalty as it deems expedient to the prosecutor. R.S.O. 1937, c. 231, s. 38.

Accounts of Association.

39. The secretary-treasurer shall enter in books to be kept for that purpose a true account of all moneys received and paid by him, and such books shall be audited and submitted to the council and to the Association when and so often as they may require. R.S.O. 1937, c. 231, s. 39.

40.—(1) Except as herein otherwise provided all notices and documents required by or for the purposes of this Act to be sent by mail, if sent by registered post, shall be deemed to have been received at the time when the same would be delivered in the ordinary course of mail. Service of notices.

(2) Such notices and documents, when sent to a person registered under this Act, shall be deemed to be properly addressed if addressed to him according to his address in the register of the Association. What to be deemed proper address. R.S.O. 1937, c. 231, s. 40.

FORM 1

(Section 10 and 12 (2))

VOTING PAPER

Association of Ontario Land Surveyors

Election 19.....

I,, of,
..... in.....
a member of the Association of Ontario Land Surveyors, do hereby
declare that:

(1) The signature hereto is in my proper handwriting.

(2) I vote for *A. B.*, of....., as (president, vice-president,
secretary-treasurer, auditor *or* auditors, *as the case may be*).

(3) I vote for the following persons as members of the Council of the
Association: *A. B.*, of....., and *C. D.*, of.....

(4) I have signed no other voting paper at this election.

(5) This voting paper was signed on the day of the date thereof.

Witness my hand this.....day of....., 19.....

R.S.O. 1937, c. 231, Form 1.

FORM 2

(Section 21)

CERTIFICATE OF ADMISSION

This is to certify that *A. B.*, of....., has duly passed his examination before the board of examiners, and has been found qualified to fill the office and perform the duties of an Ontario Land Surveyor, he having complied with all the requirements of the law in that behalf. Wherefore the said *A. B.* is admitted to the said office and is by law authorized to practise as an Ontario Land Surveyor.

In witness whereof we have signed this certificate at the City of Toronto the.....day of....., 19.....

C. D., Chairman
E. F., Secretary-treasurer

R.S.O. 1937, c. 231, Form 2.

CHAPTER 197

The Land Titles Act**1. In this Act,**

Interpretation.

- (a) "court" means the Supreme Court;
- (b) "general rules" or "rules" means the rules made under this Act;
- (c) "Inspector" means Inspector of Legal Offices appointed under *The Judicature Act*; Rev. Stat., c. 190.
- (d) "owner" means owner in fee simple;
- (e) "prescribed" means prescribed by this Act or by any general rules made under this Act;
- (f) "proper master of titles" means the master of titles or local master in whose office the land affected or intended to be affected by any proceeding, instrument or document is or may be registered;
- (g) "registered" means registered under this Act;
- (h) "sworn valuator" means a person appointed, with the approval of the Lieutenant-Governor in Council, to value land under this Act. R.S.O. 1937, c. 174, s. 1.

2. This Act, subject to section 150, shall apply to the County of York, including the City of Toronto; the County of Elgin, including the City of St. Thomas; the County of Ontario; the City of Ottawa and the County of Carleton and to provisional judicial districts only, and the land registries heretofore established for such counties and districts are hereby continued. R.S.O. 1937, c. 174, s. 2. Application of Act.

3. Any jurisdiction of the court under this Act may be exercised by a judge of the court whether sitting in court or in chambers. R.S.O. 1937, c. 174, s. 3. Exercise of jurisdiction.

PART I

ENTRY OF LAND ON REGISTER OF TITLE

Land registry for County of York to be conducted by master of titles.

4.—(1) The land registry for the County of York shall be conducted by an officer to be called the master of titles, who shall be a barrister of not less than 10 years standing at the Bar of Ontario, and shall be appointed by the Lieutenant-Governor in Council by commission under the Great Seal.

Deputy master of titles, appointment and duties of.

(2) The Lieutenant-Governor in Council may appoint a person, being a barrister or solicitor of not less than five years standing, to be the deputy of the master of titles, and the person so appointed shall act under the supervision of the master or in the absence of the master, and when so acting shall have all the powers of the master.

Powers on death or resignation of master.

(3) In case of the death or resignation of the master the deputy may act as master until his authority is revoked. R.S.O. 1937, c. 174, s. 4.

Application for registration.

5.—(1) Any person entitled for his own benefit at law or in equity to an estate in fee simple in land, whether or not subject to encumbrances, or any person capable of disposing for his own benefit by way of sale of an estate in fee simple in land, whether or not subject to encumbrances, may apply to the proper master of titles to be registered under this Act, or to have registered in his stead any nominee as owner of the land, with an absolute, qualified or possessory title, as the case may be.

Imp. 38 & 39 V. c. 87, s. 5.

Application by purchaser. Imp. 38 & 39 V. c. 87, s. 5.

(2) Any person who has contracted to buy for his own benefit an estate in fee simple in land, whether or not subject to encumbrances, may also apply if the vendor consents to the application.

Application by Crown.

(3) The Attorney-General for Canada or the Attorney-General for Ontario may apply in like manner in respect to the title of the Crown to any land, and the practice and procedure upon the application shall be the same as in ordinary cases. R.S.O. 1937, c. 174, s. 5.

Imp. 38 & 39 V. c. 87, s. 65.

TRUSTEES AND MORTGAGEES

Trustees, etc., may sell by medium of registry, or may be themselves registered.

6.—(1) Any person holding land on trust for sale, and any trustee, mortgagee or other person having a power of selling land may authorize the purchaser to make an application to be registered as owner with any title with which an owner is authorized to be registered, and may consent to the performance of the contract being conditional on his

being so registered; or any of such persons, except a mortgagee, may himself apply to be registered as such owner with the consent of the persons, if any, whose consent is required to the exercise by the applicant of his trust or power of sale.

Imp. 38 &
39 V. c. 87.
s. 68.

(2) A mortgagee having a power of selling land may apply to have the mortgagor or other person owning the equity of redemption registered as owner with any such title.

Application
by a mort-
gagee with
a power
of sale.

(3) The amount of all costs, charges and expenses properly incurred by such person, in or about the application, shall be ascertained and declared by the proper master of titles, and shall be deemed to be costs, charges and expenses properly incurred by such person in the execution of his trust or in pursuance of his power; and he may retain or reimburse the same to himself out of any money coming to him under the trust or power, and he shall not be liable to any account in respect thereof. R.S.O. 1937, c. 174, s. 6.

Costs, etc.,
thereof.

PART OWNERS

7.—(1) Any two or more persons entitled concurrently or successively, or partly in one mode and partly in another, to such estates, rights or interests in land as together make up such an estate as would, if vested in one person, entitle him to be registered as owner of the land may, subject as in this Act mentioned with respect to the number of persons to be registered in respect of the same land, apply to the proper master of titles to be registered as joint owners in the same manner and with the same incidents, so far as circumstances admit, in and with which it is in this Act declared that an individual owner may be registered.

Registration
of part
owners.

Imp. 38 &
39 V. c. 87.
s. 69.

(2) Where several persons are so registered as owners the entry may, if the parties so desire, define the estates, rights and interests, other than trust estates, rights and interests, to which the owners are respectively entitled, and such entry may be made either upon first registration or subsequently in case the estates, rights or interests so arise.

Entry on
registration
of part
owners.

(3) Persons entitled to several estates, as mentioned in subsection 1, or owners who are tenants in common or joint tenants, shall be entitled to take out one certificate in respect of the whole estate, or each person may, when the extent of his interest is defined, take out a certificate in respect of his own estate; but when a certificate for the whole is outstanding no separate certificate shall be issued till the outstanding certificate is returned and cancelled. R.S.O. 1937, c. 174, s. 7.

What
certificate
part owners
may take
out.

ABSOLUTE TITLES

Evidence where absolute title required. Imp. 38 & 39 V. c. 87, s. 6.

8. Where an absolute title is required the applicant or his nominee shall not be registered as owner of the fee simple until the title is approved by the proper master of titles. R.S.O. 1937, c. 174, s. 8.

Estate of first registered owner with absolute title.

Imp. 38 & 39 V. c. 87, s. 7.

9. The first registration of a person as owner of land, in this Act referred to as first registered owner with an absolute title, shall vest in the person so registered an estate in fee simple in the land, together with all rights, privileges and appurtenances belonging or appurtenant thereto, subject as follows,

- (a) to the encumbrances, if any, entered on the register;
- (b) to such liabilities, rights and interests, if any, as are declared for the purposes of this Act not to be encumbrances, unless the contrary is expressed on the register;
- (c) where such first registered owner is not entitled for his own benefit to the land registered, then as between him and any persons claiming under him, to any unregistered estates, rights, interests or equities to which such persons may be entitled,

but free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. R.S.O. 1937, c. 174, s. 9.

POSSESSORY TITLES

Evidence where possessory title required. Imp. 38 & 39 V. c. 87, s. 6.

10. Where a possessory title only is required the applicant or his nominee may be registered as owner of the fee simple on giving such evidence of title and serving such notices, if any, as may be prescribed. R.S.O. 1937, c. 174, s. 10.

Estate of first registered owner with possessory title.

Imp. 38 & 39 V. c. 87, s. 8.

11.—(1) The registration of a person as first registered owner with a possessory title only shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of such first registered owner, and subsisting or capable of arising at the time of registration of such owner, but shall otherwise have the same effect as registration of a person with an absolute title.

Change from possessory title to absolute or qualified title.

(2) The registered owner of land with a possessory title only may at any time apply to the proper master of titles to be registered as owner of the land with an absolute or qualified title, as the case may be, but the applicant shall not

be so registered until the title is approved by the proper master of titles in the same manner as if the application were for first registration under this Act with an absolute or qualified title.

(3) After the expiry of 10 years from the date of registration of any person as the registered owner with a possessory title only, the then registered owner of the land may, upon the payment of the prescribed fees, apply to the proper master of titles to be entered as owner with an absolute or qualified title, as the case may be, and such master may either forthwith, or after requiring such evidence to be furnished and notices to be given as he deems expedient, register the applicant as owner in fee simple with an absolute title or qualified title, as the case may be, subject to such encumbrances, if any, as the condition of the title requires. R.S.O. 1937, c. 174, s. 11.

Application to be registered as absolute or qualified title after 10 years.

QUALIFIED TITLES

12.—(1) Where on the examination of the title it appears to the proper master of titles that it can be established only for a limited period, or subject to certain reservations, the master, on the application of the party applying to be registered, may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date, or arising under a specified instrument, or otherwise particularly described in the register.

A qualified title may be registered.
Imp. 38 & 39 V. c. 87, s. 9.

(2) A title registered subject to such excepted estate, right or interest shall be called a qualified title.

"Qualified title" defined.

(3) The registration of a person as first registered owner with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted.

Estate of owner registered with a qualified title.

(4) Where the existence of an easement is proved the master may, if he thinks fit, enter notice thereof on the register.

Notice of easement.
Imp. 38 & 39 V. c. 87, s. 18, sub-s. d.

(5) Where title is shown to an easement appurtenant to the land being registered the same may be stated in the entry and certificate of ownership. R.S.O. 1937, c. 174, s. 12.

Statement of appurtenant easement on certificate, etc.

CERTIFICATE OF OWNERSHIP

13. On the entry of the name of the first registered owner of freehold land on the register the proper master of titles shall, if required by the owner, deliver to him a certificate in the prescribed form, in this Act called a "certificate of owner-

Certificate of ownership given on registration.
Imp. 38 & 39 V. c. 87, s. 10.

ship", which shall state whether the title of the owner therein mentioned is absolute, qualified or possessory. R.S.O. 1937, c. 174, s. 13.

Registry
Act not
to apply to
land under
this Act.
Rev. Stat.
c. 336.

14.—(1) A certificate by the proper master of titles of the first registration of an owner under this Act shall be registered in the registry division in which the land is situate, and thereafter *The Registry Act* shall cease to apply to the land.

Particulars
to be stated
in certificate
for registry
office.

(2) The certificate, besides describing the land, shall state the date of the first registration, the number of the parcel and the register in which the land is registered, and the registrar shall in his abstract index enter the number of the parcel and the register as given in the certificate. R.S.O. 1937, c. 174, s. 14.

PART II

LEASEHOLD LAND

Register of
leasehold
land.

15.—(1) A separate register of leasehold land shall be kept and,

Application
for regis-
tration with
or without a
declaration
of title of
lessor to
grant lease.
Imp. 38 &
39 V. c. 87,
s. 11.

- (a) any person who has contracted to buy for his own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which at least 21 are unexpired, or in respect of which the lessee or his assigns is or are entitled to a renewal term or succession of terms amounting with the portion unexpired of the current term to at least 21 years, or to a renewal for a life or lives, whether or not subject to encumbrances;
- (b) any person entitled for his own benefit, at law or in equity, to leasehold land held under any such lease whether or not subject to encumbrances; or
- (c) any person capable of disposing for his own benefit by way of sale of leasehold land held under any such lease whether or not subject to encumbrances,

may apply to the proper master of titles to be registered, or to have registered in his stead any nominee as owner of such leasehold land, with the addition, where the lease under which the land is held is derived immediately out of freehold land and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held; provided that, in the case of leasehold land contracted to be bought, the vendor consents to the application.

(2) Every applicant for registration of leasehold land shall deposit with the master the lease in respect of which the application is made or, if the lease is proved to the satisfaction of the master to be lost, a copy of the lease or of a counterpart thereof, verified to the satisfaction of the master, and such lease or verified copy is in this Act referred to as the registered lease.

(3) Leasehold land held under a lease containing an absolute prohibition against alienation shall not be registered.

Where lease contains prohibition against alienation.

(4) Leasehold land held under a lease containing a prohibition against alienation, without the licence of some other person, shall not be registered until provision is made in the prescribed manner for preventing alienation without such licence by entry in the register of a restriction to that effect or otherwise.

Where alienation permitted by licence.

(5) Section 6 shall apply to leasehold as well as to freehold land. R.S.O. 1937, c. 174, s. 15.

Sec. 6 to apply to leasehold land.

16. An applicant or his nominee shall not be registered as owner of leasehold land until the title to such land is approved by the proper master of titles, and if he applies to be registered as owner of leasehold land, with a declaration of the title of the lessor to grant the lease under which the land is held, shall not be registered with such declaration until the lessor, after an examination of his title by the master, is declared to have had an absolute or qualified title to grant the lease under which the land is held. R.S.O. 1937, c. 174, s. 16.

Evidence of title required on application.

Imp. 38 & 39 V. c. 87, s. 12.

17. The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had an absolute title to grant the lease under which the land is held, shall vest in such person the land comprised in the registered lease relating to the land for all the leasehold estate therein described with all implied or expressed rights, privileges and appurtenances attached to such estate, but subject,

Estate of first registered owner of leasehold land with a declaration of absolute title of lessor to grant lease.

Imp. 38 & 39 V. c. 87, s. 13.

- (a) to all implied and express covenants, obligations and liabilities incident to such leasehold estate;
- (b) to the encumbrances, if any, entered on the register;
- (c) unless the contrary is expressed on the register to such liabilities, rights and interests as affect the leasehold estate and are by this Act declared not to be encumbrances in the case of registered freehold land; and
- (d) where such first registered owner is not entitled for

his own benefit to the land registered, then, as between himself and any person for whom he holds or claiming under him, to any unregistered estates, rights, interests or equities to which such person may be entitled,

but free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. R.S.O. 1937, c. 174, s. 17.

Estate of first registered owner of leasehold land without a declaration of title of lessor to grant lease. Imp. 38 & 39 V. c. 87, s. 14.

18. The registration of a person as first registered owner of leasehold land, without a declaration of the title of the lessor, shall not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but, save as aforesaid, shall have the same effect as the registration of a person as first registered owner of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1937, c. 174, s. 18.

Lessor may be declared to have a qualified title to grant lease.

Imp. 38 & 39 V. c. 87, s. 15.

19.—(1) Where on the examination of the title of a lessor by the proper master of titles it appears to him that the title of the lessor to grant the lease under which the land is held can be established only for a limited period, or subject to certain reservations, the master may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register, and a title of a lessor subject to such excepted estate, right or interest shall be deemed a qualified title.

Effect of registration as first registered owner of leasehold land.

(2) The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had a qualified title to grant the lease under which the land is held, shall have the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that registration with the declaration of a qualified title shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1937, c. 174, s. 19.

Office copy of lease given on registration.

Imp. 38 & 39 V. c. 87, s. 16.

20. On the entry of the name of the first registered owner of leasehold land on the register the proper master of titles shall, if required by the owner, deliver to him a copy of the registered lease, in this Act called an office copy, authenticated in the prescribed manner, and there shall be endorsed thereon

a statement whether any declaration, absolute or qualified, as to the title of the lessor has been made, and any other particulars relating to such lease entered in the register. R.S.O. 1937, c. 174, s. 20.

PART III

REGISTRATION, HOW EFFECTED

21. The examination of a title shall be conducted in the prescribed manner, subject to the following provisions:

Regulations
as to exami-
nation of title
by master.

- (a) Due notice shall be given where the giving of such notice is prescribed and sufficient opportunity shall be afforded to any person desirous of objecting to come in and state his objections to the proper master of titles. Imp. 38 & 39 V. c. 87, s. 17.
- (b) The master shall have jurisdiction to hear and determine any such objections, subject to an appeal to the court in the prescribed manner and on the prescribed conditions.
- (c) If the master, upon the examination of any title, is of opinion that it is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve of it or may require the applicant to apply to the court, upon a statement signed by the master, for its sanction to the registration.
- (d) It shall not be necessary to produce any evidence which, by *The Vendors and Purchasers Act*, is dispensed with as between vendor and purchaser, or to produce or account for the originals of any registered deeds, documents or instruments unless the master otherwise directs. Rev. Stat., c. 407
- (e) The master may receive and act upon any evidence which is received in court on a question of title, or any evidence which the practice of conveyancers authorizes to be received on an investigation of a title out of court, or any other evidence, whether the same is or is not receivable or sufficient in point of strict law, or according to the practice of conveyancers, if the same satisfies him of the truth of the facts intended to be made out thereby.
- (f) The master may refer to and act upon not only the evidence adduced before him in the proceeding in which such evidence is adduced but also any evidence

adduced before him in any other proceeding wherein the facts to which such evidence relates were or are in question.

- (g) The master may also act upon his own personal knowledge of material facts affecting the title upon making and filing a report, stating his knowledge of the particular facts and the means he had of obtaining such knowledge. R.S.O. 1937, c. 174, s. 21.

Employment
of counsel
for examina-
tions of titles.
Imperial
L. T. Rules,
1903, Nos.
36 and 313.

22. The Lieutenant-Governor in Council may name one or more barristers to whom the master of titles may refer the examination of the title, in whole or in part, of any land in respect of which an application is made, and the master may act upon the opinion of such referee. R.S.O. 1937, c. 174, s. 22.

Liability of
registered
land to
easements
and certain
other rights.
Imp. 38 &
39 V. c. 87,
s. 18.

23.—(1) All registered land, unless the contrary is expressed on the register, shall be subject to such of the following liabilities, rights and interests as for the time being may be subsisting in reference thereto, and such liabilities, rights and interests shall not be deemed encumbrances within the meaning of this Act:

- (a) provincial taxes and succession duty and municipal taxes, charges, rates or assessments, and school or water rates;
- (b) any right of way, water-course, and right of water, and other easements;
- (c) any title or lien which, by possession or improvements, the owner or person interested in any adjoining land has acquired to or in respect of the registered land;
- (d) any lease or agreement for a lease, for a period yet to run which does not exceed three years, where there is actual occupation under it;
- (e) any right of the wife or husband of the person registered as owner to dower or curtesy, as the case may be, in case of surviving such owner;
- (f) a mechanic's lien where the time limited for the registration thereof has not expired;
- (g) any right of expropriation, access or user or any other right, conferred upon or reserved to or vested in the Crown by or under the authority of any Statute of Canada or Ontario;
- (h) any public highway.

(2) The description of the land in the entry of ownership shall not, as against adjoining owners, be conclusive as to the boundaries or extent thereof.

Description not conclusive against adjoining owners.

(3) Where a licence under *The Crown Timber Act* has been or is granted, and the land is registered under this Act, the same shall be deemed to have been and to be subject to the rights of the licensee or his assigns for the current licence year under the licence, and to the rights of His Majesty in the pine trees under *The Public Lands Act*, without the fact of the land being so subject being expressed in the entry in the register, or in the certificate of ownership. R.S.O. 1937, c. 174, s. 23.

Effect of registration of land upon timber licences.

Rev. Stat., cc. 82, 309.

24.—(1) If the applicant desires the certificate to declare the title to be free from the particulars mentioned in clauses *a* to *e* of subsection 1 of section 23, or any of them, his application shall so state, and the investigation shall proceed accordingly.

Where applicant desires certificate free from cls. a-e of s. 23 (1).

(2) Where the applicant desires that the land shall be registered free from any public highway a notice so stating shall be published once a week for two successive weeks in a newspaper published in the municipality in which the land lies or where there is no such newspaper in one published in a neighbouring municipality, and the notice shall also be served upon the Attorney-General and upon the head or the clerk of the council of the municipality in which the land lies.

Notice of application to have certificate free from highway.

(3) If the Attorney-General or the corporation of the municipality or any person objects to the land being so registered the Attorney-General or such corporation or person may in his objection require that the question of the existence of the highway be tried in the court, and in that case the master shall postpone his finding upon that part of the application until the question is finally determined, and shall give such directions as he may deem proper in order that an early adjudication thereon may be had.

Trial of right of highway in Supreme Court.

(4) Notwithstanding that the Attorney-General or the corporation or person objecting has not required the question to be tried in the court the master of his own motion or upon the application of either party may direct that an action be brought or an issue be tried in the court for the determination of the question on such terms and conditions as to costs and otherwise as he may deem just.

Master may direct action or issue.

Registration pending decision and subsequent variation of entry.

(5) The master pending the final decision of the question may register the applicant as owner, subject to any public highway and upon the final determination of the question if it is determined in favour of the applicant the entry and certificate of ownership shall be varied in accordance therewith. R.S.O. 1937, c. 174, s. 24.

MORTGAGES EXISTING AT FIRST REGISTRATION

Lands subject to mortgage at time of registration.

25.—(1) Where land is registered subject to mortgages existing thereon at the time of the first registration the mortgages shall be noted in the register in the same order as they are registered in the registry office if such mortgages have been so registered, or the dates of the respective registrations thereof shall be stated, but this shall not be taken as an affirmation that such mortgages rank in the order in which they were registered or in the order in which they are noted.

Abstracts of instruments dealing with same.

(2) Abstracts of all instruments dealing with such mortgages shall thereafter be entered in the register, and the entry thereof shall be deemed the registration of the instrument, and the rights of the parties interested or claiming to be interested in any such mortgage so far as it affects land under this Act shall, subject to sections 9 to 12 and 41 to 44, be decided under the registry law as if the registrations in the office of land titles had been made under *The Registry Act*. R.S.O. 1937, c. 174, s. 25.

Rev. Stat., c. 336.

DETERMINATION OF ENCUMBRANCES OR LEASES EXISTING AT FIRST REGISTRATION

Complete or partial discharge of encumbrance.

Imp. 38 & 39 V. c. 87, s. 19.

26.—(1) Where upon the first registration of land notice of any encumbrance affecting the land has been entered on the register the proper master of titles, on proof to his satisfaction of the discharge of the encumbrance, shall note in the prescribed manner on the register, by cancelling the original entry or otherwise, the cessation of the encumbrance and thereupon the encumbrance shall cease.

Note of discharge on requisition of mortgagee.

(2) On the requisition or certificate of a mortgagee whose mortgage was entered on the register on the first registration of the land, or the registered assignee thereof, or of the personal representative of such mortgagee or assignee, authorizing or certifying the discharge of the whole or any part of the land therefrom, or the discharge of the whole or any part of the money thereby secured, the master may note on the register the discharge of such land from the mortgage or the discharge of such part of the money, and thereupon, as to the land or money discharged, the encumbrance shall cease.

(3) The death of the person who signed the requisition or certificate shall not revoke or otherwise affect the same. Death of person after signing requisition.
R.S.O. 1937, c. 174, s. 26.

27. The proper master of titles, on proof to his satisfaction of the determination of any lease of registered land existing at the first registration, shall note in the prescribed manner on the register the determination of the lease. Determination of lease. Imp. 38 & 39 V. c. 87, s. 20. R.S.O. 1937, c. 174, s. 27.

ADVERSE POSSESSION AS AGAINST REGISTERED OWNER

28.—(1) A title to any land adverse to or in derogation of the title of the registered owner shall not be acquired by any length of possession. No title by adverse possession. Imp. 38 & 39 V. c. 87, s. 21.

(2) This section shall not prejudice, as against any person registered as first owner of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of the land at the time when the registration of such first owner took place. Operation of section. R.S.O. 1937, c. 174, s. 28.

PART IV

TRANSFER AND CHARGE OF REGISTERED LAND

CHARGE OF REGISTERED LAND

29.—(1) Every registered owner may in the prescribed manner charge the land with the payment at an appointed time of any principal sum of money either with or without interest, or as security for any other purpose, and with or without a power of sale. Creation of charges. Imp. 38 & 39 V. c. 87, s. 22.

(2) The charge shall be completed by the proper master of titles entering on the register the person in whose favour the charge is made as the owner of the charge, stating the amount of the principal sum which the charge secures, with the rate of interest and the periods of payment, or the other purpose for which the charge is given. Charge, how completed.

(3) Where the charge contains a power of sale that fact shall be stated, but the particulars need not be set out in the register, nor shall it be necessary to set forth incidental matters which may be expressly charged, such as costs of inspection, or of abortive attempts to sell and the like. Where charge contains power of sale.

(4) The charge, when registered, shall confer upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the encumbrances and qualifications Effect of charge when registered.

to which such interest is subject, but free from any unregistered interests in the land.

Delivery of certificate to owner of charge.

(5) The master shall also, if required, deliver to the owner of the charge a certificate of charge in the prescribed form.

Application of Rev. Stat., c. 336, s. 77.

(6) The provisions of section 77 of *The Registry Act* shall apply to the charge as if it was a registered mortgage. R.S.O. 1937, c. 174, s. 29.

Implied covenant to pay charges.

Imp. 38 & 39 V. c. 87, s. 23.

30.—(1) Where a registered charge is created there shall be implied on the part of the registered owner, at the time of the creation of the charge, his heirs, executors and administrators, unless there is an entry on the registry negating the implication, covenants with the registered owner for the time being of the charge,

(a) to pay the principal sum charged and interest, if any, thereon at the appointed time and rate, and all taxes, rates, charges, rents, statute labour or other impositions theretofore or thereafter imposed or charged on the land, and that in case of default all payments made by the owner of the charge may be added to the principal sum and bear interest;

(b) if the principal sum or any part thereof is unpaid at the appointed time, to pay interest half-yearly at the appointed rate on so much of the principal sum as for the time being remains unpaid.

Provision where charge expressed to be made under Rev. Stat., c. 362.

(2) Where a charge, whether or not under seal, is expressed to be made in pursuance of *The Short Forms of Mortgages Act*, or refers thereto, and contains any form of words numbered 1, 2, 3, 7, 8, 12, 14, 15 or 16 in Column One of Schedule B to that Act, whether expressed in the first or third person, such words shall have the same meaning and effect as the words under the corresponding number in Column Two of that Schedule, and the provisions of that Act shall apply to the charge.

When chargee may distrain for arrears of interest.

Rev. Stat., c. 362.

(3) Where in a charge made in pursuance of *The Short Forms of Mortgages Act* there is inserted the provision that the mortgagee may distrain for arrears of interest such provision shall confer upon the chargee the same right of distress as would be conferred upon a mortgagee of land not under the provisions of this Act. R.S.O. 1937, c. 174, s. 30.

Implied covenants in case of leaseholds.

Imp. 38 & 39 V. c. 87, s. 24.

31. Where a registered charge is created on any leasehold land there shall be implied on the part of the registered owner of the leasehold land, at the time of the creation of the charge, his heirs, executors and administrators, unless there is an entry on the register negating the implication, covenants with the registered owner for the time being of the charge,

- (a) that the registered owner of the leasehold land, at the time of the creation of the charge, his executors, administrators or assigns will pay, perform and observe the rent, covenants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed; and
- (b) will keep the owner of the charge, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of such rent, or any part thereof, or the breach of such covenants or conditions or any of them. R.S.O. 1937, c. 174, s. 31.

32. Subject to any entry to the contrary on the register the registered owner of a registered charge, for the purpose of obtaining satisfaction of any money due to him under the charge, at any time during the continuance of his charge, may enter upon the land charged, or any part thereof, or into the receipt of the rents and profits thereof, subject nevertheless to the right of any persons appearing on the register to be prior encumbrancers, and to the liability attached to a mortgagee in possession. R.S.O. 1937, c. 174, s. 32.

Entry by owner of charge.
Imp. 38 & 39
V. c. 87,
s. 25.

33. Subject to any entry to the contrary on the register the registered owner of a registered charge may enforce it by foreclosure or sale in the same manner and under the same circumstances in and under which he might enforce the same if the land had been transferred to him by way of mortgage, subject to a proviso for redemption. R.S.O. 1937, c. 174, s. 33.

Foreclosure by owner of charge.
Imp. 38 & 39
V. c. 87,
s. 26.

34. Subject to any entry to the contrary on the register the registered owner of a registered charge with a power of sale, in accordance with the terms of the power, may sell and transfer the interest in the land which is the subject of the charge, or any part thereof, in the same manner as if he were the registered owner of the land to the extent of such interest therein. R.S.O. 1937, c. 174, s. 34.

Remedy of owner of charge with a power of sale.
Imp. 38 & 39
V. c. 87,
s. 27.

35. Subject to any entry to the contrary on the register registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register, and not according to the order in which they are created. R.S.O. 1937, c. 174, s. 35.

Priority of registered charges.
Imp. 38 & 39
V. c. 87,
s. 28.

Discharge
of encum-
brance.

Imp. 38 & 39
V. c. 87,
s. 28.

36.—(1) The proper master of titles shall, on the requisition of the registered owner of any land and on due proof of the satisfaction of a charge thereon, or may, on the requisition of the registered owner of a charge or of his personal representative or on his certificate of the satisfaction thereof, note on the register in the prescribed manner, by cancelling the original entry or otherwise, the cessation of the charge, and thereupon the charge shall cease.

Other en-
cumbrances.

(2) The master may in like manner and with the like effect note the cessation of any other encumbrance.

Partial
cessation
of charge.

(3) On the requisition or certificate of the registered owner of a charge, or of the personal representative of such owner authorizing or certifying the discharge of any part of the land therefrom or the discharge of any part of the money thereby secured, the master may note on the register the discharge of such land from the charge or the discharge of such part of the money and thereupon as to the land or money discharged the charge shall cease.

Death of
person
certifying
to cessation
of charge.

(4) The death of the person who signed the requisition or certificate shall not revoke or otherwise affect the same. R.S.O. 1937, c. 174, s. 36.

TRANSFERS AFTER LAND IS BROUGHT UNDER THIS ACT

Transfer of
land.

37.—(1) Every registered owner may, in the prescribed manner, transfer the land or any part thereof.

Registering
transferee
as owner.

Imp. 38 & 39
V. c. 87,
s. 29.

(2) The transfer shall be completed by the proper master of titles entering on the register the transferee as owner of the land transferred, and until such entry is made the transferor shall be deemed to remain owner of the land.

Certificate.

(3) Upon completion of the registration of the transferee the master shall, if required, deliver to him a certificate of ownership in the prescribed form.

Where part
only is
transferred.

(4) Where part only of the land is transferred the master shall also, if required, deliver to the transferor a certificate of ownership containing a description of the land retained by him. R.S.O. 1937, c. 174, s. 37.

Right to
compel
production
of certificate
of ownership.

38.—(1) Any person who is entitled to have a transfer or charge entered on the register shall have the right to require the holder of the certificate of ownership, if any is outstanding, to produce the certificate to the proper master of titles, or to deliver it to such person for production for the purpose of having all proper entries or alterations made thereon by

the master, or for cancellation when the certificate has become effete.

(2) A person entitled to have a cessation of a charge entered shall have the right to have an outstanding certificate of ownership of the charge produced in like manner in order that it may be cancelled. R.S.O. 1937, c. 174, s. 38.

Certificates of ownership of a charge which has ceased.

39.—(1) Where, upon an application for the registration of a charge or of a transfer of any land or charge, the proper master of titles considers it expedient to require the production of the certificate of ownership, either for the purpose of identifying the person dealing with the land or charge or for cancellation when the same ought to be cancelled or for any other purpose, he may do so, and may decline to enter the charge or transfer on the register until the certificate has been produced, and if the certificate is not produced within such time as the master limits he may return the transfer or charge.

Master may require production of certificate of ownership.

(2) Where a master declines to register an instrument on account of any deficiency or irregularity therein, or for want of evidence deemed by him to be requisite or for any other reason, and the person desiring registration after having been given such time as shall in the master's opinion afford a reasonable opportunity to comply with the master's requirements, fails to do so and fails to appeal successfully from the master's decision, the master may proceed with other registrations affecting the land as if no such instrument had been presented for registration, and he shall not be affected with notice of the contents of any instrument which he has declined to register as aforesaid. R.S.O. 1937, c. 174, s. 39.

Where master declines to register instrument, or to register except upon conditions and applicant fails to appeal or comply.

40. Where registered land is transferred to trustees under *The Religious Institutions Act* the trustees shall be registered as owners in the usual manner and by their corporate name without setting out the purposes or trusts on which the land is held, but a note shall be made by the proper master of titles that the land is only to be transferred or charged in accordance with that Act. R.S.O. 1937, c. 174, s. 40.

Transfers to trustees under Rev. Stat., c. 338.

41. A transfer for valuable consideration of land registered with an absolute title, when registered, shall confer on the transferee an estate in fee simple in the land transferred, together with all rights, privileges and appurtenances belonging or appurtenant thereto, subject to,

Estate of transferee for valuable consideration of land with absolute title. Imp. 38 & 39 V. c. 87, s. 30.

(a) the encumbrances, if any, entered or noted on the register; and

- (b) such liabilities, rights and interests, if any, as are declared for the purposes of the Act not to be encumbrances unless the contrary is expressed on the register,

and as to such rights, privileges and appurtenances, subject also to any qualification, limitation or encumbrance to which the same are expressed to be subject in the register, or where such rights, privileges and appurtenances are not registered, then subject to any qualification, limitation or encumbrance to which the same are subject at the time of the transfer; but free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. R.S.O. 1937, c. 174, s. 41.

Estate of transferee for valuable consideration of land with qualified title.

Imp. 38 & 39
V. c. 87,
s. 31.

42. A transfer for valuable consideration of land registered with a qualified title, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with an absolute title, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1937, c. 174, s. 42.

Estate of transferee for valuable consideration of land with possessory title.

Imp. 38 & 39
V. c. 87,
s. 32.

43. A transfer for valuable consideration of land registered with a possessory title shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered owner, and subsisting, or capable of arising, at the time of the registration of such owner; but otherwise, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with an absolute title. R.S.O. 1937, c. 174, s. 43.

Estate of voluntary transferee of land.

Imp. 38 & 39
V. c. 87,
s. 33.

44. A transfer of registered land, made without valuable consideration, shall be subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same; but otherwise, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, shall have the same effect as a transfer of the same land for valuable consideration. R.S.O. 1937, c. 174, s. 44.

CLAIMS FOR DOWER

Claim that land is free from dower.

45.—(1) Where it is claimed that registered land is free from dower on account of the land being held in trust, or for some reason other than the wife's release of her dower by an instrument which can be produced and registered, and

evidence to that effect which appears satisfactory is produced before the proper master of titles, he may issue a notice requiring the wife to support her right if she claims to be entitled to dower in the land, and if she fails to do so the master may enter on the register a memorandum that the land is free from dower, and such entry shall, unless reversed on appeal, be a bar to any claim by the wife, and no appeal shall lie unless the wife claims her right of dower before the master.

(2) This section shall also apply to the widow of a former owner. R.S.O. 1937, c. 174, s. 45.

Widow of former owner.

46. Where registered land is transferred subject to a charge, or where the registered owner of land which is subject to a charge subsequently marries, the wife of the transferee or owner shall have the same rights in respect of dower as she would have had if the legal estate had been transferred by an ordinary mortgage and no others. R.S.O. 1937, c. 174, s. 46.

Dower in case of transfer of encumbered land.

TRANSFERS OF LEASEHOLDS

47.—(1) Every registered owner of leasehold land may, in the prescribed manner, transfer the whole of his estate in the land or in any part thereof.

Transfer of leasehold land. Imp. 38 & 39 V. c. 87, s. 34.

(2) The transfer shall be completed by the proper master of titles entering on the register the transferee as owner of the leasehold land transferred, but until such entry is made the transferor shall be deemed to remain owner.

Until registration transferor to be deemed owner.

(3) Upon completion of the registration of the transferee, if the transfer includes the whole of the land comprised in the registered lease relating to such land, the transferee shall be entitled to the office copy of the registered lease.

Upon registration transferee to be entitled to office copy of lease.

(4) If a part only is transferred the master, if required according to any agreement that has been entered into between the transferor and transferee, shall deliver to the one the office copy of the registered lease and to the other a fresh office copy of such lease, each of such copies showing, by endorsement or otherwise, the parcels of which the person to whom such copy is delivered is the registered owner. R.S.O. 1937, c. 174, s. 47.

Where part only transferred.

Estate of transferee for valuable consideration of leasehold land with a declaration of absolute title of lessor.
Imp. 38 & 39
V. c. 87,
s. 35.

48. A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, when registered, shall vest in the transferee the land transferred for all the leasehold estate described in the registered lease relating to such land and then unexpired, with all implied or expressed rights, privileges and appurtenances attached to such estate, but subject to,

- (a) all implied and express covenants, obligations and liabilities incident to such estate;
- (b) the encumbrances, if any, entered or noted on the register; and
- (c) such liabilities, rights and interests as affect the leasehold estate and are by this Act declared for the purposes of the Act not to be encumbrances in the case of registered freehold land unless the contrary is expressed on the register,

but free from all other estates and interests whatsoever, including any estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. R.S.O. 1937, c. 174, s. 48.

Estate of transferee for valuable consideration of leasehold land without a declaration of title of lessor.

Imp. 38 & 39
V. c. 87,
s. 37.

49. A transfer for valuable consideration of leasehold land, registered without a declaration of the title of the lessor, shall not affect the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but otherwise, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1937, c. 174, s. 49.

Estate of transferee for valuable consideration of leasehold land with a declaration of qualified title of lessor.

Imp. 38 & 39
V. c. 87,
s. 36.

50. A transfer for valuable consideration of leasehold land, registered with a declaration that the lessor had a qualified title to grant the lease under which the land is held, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted from the effect of registration. R.S.O. 1937, c. 174, s. 50.

51. A transfer of registered leasehold land made without valuable consideration shall be subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same; but otherwise, when registered, in all respects and in particular as respects any registered dealings on the part of the transferee, shall have the same effect as a transfer of the same land for valuable consideration. R.S.O. 1937, c. 174, s. 51.

Estate of
voluntary
transferee
of leasehold
land.

Imp. 38 & 39
V. c. 87,
s. 38.

52. On the transfer of any registered leasehold land, unless there is an entry on the register negating such implication, there shall be implied,

Implied
covenants on
transfer of
leasehold
estates.

(a) on the part of the transferor a covenant with the transferee that, notwithstanding anything by such transferor done, omitted or knowingly suffered, the rents, covenants and conditions reserved and contained by and in the registered lease, and on the part of the lessee to be paid, performed and observed, have been so paid, performed and observed up to the date of the transfer; and

Imp. 38 & 39
V. c. 87,
s. 39.

(b) on the part of the transferee a covenant with the transferor that the transferee, his executors, administrators or assigns will pay, perform and observe the rents, covenants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed, and will keep the transferor, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of the rent or any part thereof, or the breach of the covenants or conditions or any of them. R.S.O. 1937, c. 174, s. 52.

TRANSFER OF CHARGES

53.—(1) The registered owner of a charge may, in the prescribed manner, transfer the charge to another person as owner.

Transfer of
charges.
Imp. 38 & 39
V. c. 87,
s. 40.

(2) The transfer shall be completed by the proper master of titles entering on the register the transferee as owner of the charge transferred.

Transfer
completed by
entry on
register.

(3) The transfer, when registered, shall confer upon the transferee the ownership of the charge free from any unregistered interests therein, and the transfer of part of the sum secured by a charge shall confer upon the transferee the ownership of such part free from any unregistered interests therein.

Effect of
registration
of transfer.

As between
chargor and
chargee.

(4) Every transfer of a charge shall be subject to the state of account upon the charge between the chargor and the chargee.

Delivery
of fresh
certificate.

(5) The master shall also, if required, deliver to the transferee a fresh certificate of charge.

Transferor
deemed
owner until
registration.

(6) The transferor shall be deemed to remain owner of the charge until the name of the transferee is entered on the register in respect thereof.

Transfer of
part of a
charge.

(7) The registered owner of a charge may transfer a part of the sum secured by the charge, and the part so transferred may be given priority over the remaining part, or may be deferred or may continue to rank equally with it as may be stated in the transfer. R.S.O. 1937, c. 174, s. 53.

TIME OF REGISTRATION

Priority.

54. The day, hour and minute of the receipt of each instrument and copy of writ shall be noted thereon, and for the purpose of priority between chargees, transferees and others the time of the receipt shall be deemed the time of registration. R.S.O. 1937, c. 174, s. 54.

Instrument
to show
address of
grantee or
chargee.

55.—(1) Each instrument under this Act shall by endorsement thereon show the full name and place of residence, giving the street number, if any, of the grantee or chargee, as the case may be. R.S.O. 1937, c. 174, s. 55 (1).

Master of
titles to
furnish
municipality
with list of
conveyances.

(2) The master of titles, upon the request of the council of a municipality, shall furnish a list of all conveyances whereby land in the municipality has been transferred, charged or leased, which have been registered in his office during the next preceding year or any part thereof, and the list shall include in respect of each conveyance, the names and addresses of the parties, the consideration and a short description of the land.

Fees.

(3) The master of titles shall be entitled to a fee of 10 cents for every conveyance entered in the list. 1948, c. 87, s. 5.

TRANSMISSION OF LAND AND CHARGES ON OWNER'S DEATH

Transmission
on death
of owner of
freehold
land.

56. On the death of the sole registered owner, or of the survivor of several joint registered owners, of any freehold land such person shall be registered as owner in the place of the deceased owner or owners as may, on the application of any person interested in such land, be appointed by the proper master of titles, regard being had to the rights of

Imp. 38 & 39
V. c. 87,
s. 41.

the several persons interested in the land, and in particular to the selection of any such persons as may for the time being appear to the master to be entitled, according to law, to be so appointed, subject to an appeal to the court in the prescribed manner by any person aggrieved by any order of the master under this section. R.S.O. 1937, c. 174, s. 56.

57. On the death of the sole registered owner, or of the survivor of several joint registered owners, of any leasehold land or of any charge the executor or administrator of such sole deceased owner, or of the survivor of such joint owners, shall be entitled to be registered as owner in his place. R.S.O. 1937, c. 174, s. 57.

Transmission on death of owner of leasehold land or of charge.

Imp. 38 & 39 V. c. 87, s. 42.

58. Where two or more persons holding as tenants in common have been entered as owners of any land or charge, and one of them dies, his personal representative or such other person as may be entitled to the share of the deceased, may be entered as owner with the survivor or survivors. R.S.O. 1937, c. 174, s. 58.

Entry of representatives of deceased tenant in common.

59. Any person registered in the place of a deceased owner or to whom a patent is issued as executor or administrator or in any representative capacity shall hold the land or charge, in respect of which he is registered, upon the trusts and for the purposes to which the same is applicable by law, and subject to any unregistered estates, rights, interests, or equities subject to which the deceased owner held the same; but otherwise in all respects, and in particular as respects any registered dealings with such land or charge, he shall be in the same position as if he had taken such land or charge under a transfer for a valuable consideration. R.S.O. 1937, c. 174, s. 59.

Nature of title of registered fiduciary owners.

Imp. 38 & 39 V. c. 87, s. 46.

60. The fact of any person having become entitled to any land or charge in consequence of the death of a registered owner shall be proved in the prescribed manner. R.S.O. 1937, c. 174, s. 60.

Evidence of transmission of registered ownership. Imp. 38 & 39 V. c. 87, s. 47.

61. Where an heir or devisee applies to be entered as owner of any registered land which has vested in him under *The Devolution of Estates Act* the proper master of titles shall make such entry without reference to the liability of the land for debts, except under executions, copies of which have been duly lodged, and the liability under that Act of such land or any transferor thereof shall be determined as if such land had not been registered under this Act. R.S.O. 1937, c. 174, s. 61,

Entry of heir or devisee without reference to debts of estate.

Rev. Stat., c. 103.

Transfer of interest of deceased owner not to be entered without consent of Treasurer of Ontario.

Rev. Stat., c. 103.

62. Notwithstanding anything in *The Devolution of Estates Act* or this Act, no executor, administrator, devisee, beneficiary, heir, nor any person interested in any freehold or leasehold land, nor in any charge or interest therein, shall, by reason of the death of any registered owner, co-owner or joint owner of any such land, charge or interest in land be entered as owner unless the consent in writing of the Treasurer of Ontario is attached to or endorsed on the application for transmission of interest or application for entry and such entry shall be in respect of only the land, charge or interest in land mentioned in the application and in the case of the death of the registered owner of any charge where no such entry is being applied for, but a cessation of the charge is tendered for registration, such cessation shall not be registered until the above consent is attached thereto or endorsed thereon. R.S.O. 1937, c. 174, s. 62.

Application of section.

63. Section 62 shall not apply where the death of the registered owner occurred prior to the 1st day of January, 1930. R.S.O. 1937, c. 174, s. 63.

EXECUTIONS AND SALE THEREUNDER

Notice of executions.

64.—(1) The sheriff or other officer to whom the same is directed forthwith after the delivery to him of any execution or other writ, or renewal thereof, affecting registered land, upon written request of the party by whom such execution or other writ was sued out or renewed, or of his solicitor, but not otherwise, shall deliver or transmit by registered post to the proper master of titles a copy of the writ certified under his hand, and no registered land shall be bound by any such writ until such copy has been received by the master, and after the receipt by him of the copy no transfer by the execution debtor shall be effectual, except subject to the rights of the execution creditor under the writ.

Record of same.

(2) The master shall keep a book in the prescribed form in which shall be entered a record of all writs, copies of which are received by him from the sheriff or other officer.

Transfer before entry void as against purchaser.

(3) No sale or transfer under any such writ shall be valid as against a person purchasing for valuable consideration before such entry is made, notwithstanding that the purchaser may have had notice of the writ.

Entry of satisfaction of writ.

(4) Upon production to the master of sufficient evidence of the satisfaction of any such writ he shall cause an entry to be made in the book to that effect, and on such entry the writ shall be deemed to be satisfied.

(5) Every writ and renewal of a writ shall be presumed to have been spent, and the delivery or transmission of a copy thereof shall cease to have effect at the expiration of the writ or renewal as appearing on the copy transmitted; but if there has been a sufficient commencement of the execution to enable it to be completed by the sale and conveyance of the land under the writ, and the same has not been completely executed, the sheriff or officer shall, or the execution creditor may, at any time within one month before the expiration of the writ or renewal as so appearing, file with the master a certificate of the sheriff or officer stating that fact, and such certificate shall be noted at the entry of the writ in the book, and the writ shall continue in force for a further period of one year from the filing of the certificate when it shall cease to have effect unless another similar certificate is filed which shall operate in like manner.

When writ to be presumed to be spent.

(6) Where an execution or other writ is issued against the registered owner under a different name from that under which he is registered the writ shall have no effect under this Act, unless the person who sues out the writ, or his solicitor, gives a notice to the master stating the name under which the execution debtor is registered, and otherwise in the form or to the effect prescribed, or unless a like notice is written upon the copy of the writ.

Notice where writ against owner under different name from that on the register.

(7) The sheriff or other officer shall be entitled to a fee of 50 cents for each copy of writ or certificate transmitted by him. R.S.O. 1937, c. 174, s. 64.

Fee to sheriff.

65. Where a transferor or transferee of land, or maker or owner of a charge, claims that a writ apparently affecting land does not affect the land or charge he shall produce such evidence thereof as the proper master of titles may consider necessary, and the master may require all parties interested to be notified of the application to register freed from the writ, and may himself decide the question or may direct an issue to be tried or a case to be stated and may make such order as to costs as he deems just. R.S.O. 1937, c. 174, s. 65.

Where claimed that land not affected by writ apparently affecting same.

66.—(1) The seizure under execution or other process of a mortgage or charge, or of leasehold land registered under this Act, shall not take effect until a certificate of the sheriff or other officer that he has taken such mortgage, charge or leasehold land under such process against the registered owner thereof is lodged with the proper master of titles.

Seizure ineffectual until certificate by sheriff.

(2) The certificate shall state the number of the parcel under which the land affected is registered and the name of the owner, and shall be noted by the master in the register.

Contents of certificate.

Application
of section,
Rev. Stat.,
c. 120.

(3) This section shall not apply where the proceedings prescribed by section 24 of *The Execution Act* have been taken with respect to a mortgage or charge. R.S.O. 1937, c. 174, s. 66.

Sale under
execution of
registered
land.

67. Where any registered freehold or leasehold land is sold under execution or other process the proper master of titles, upon the production to him of the transfer of the same by the sheriff or other officer in the prescribed form, with proof of the due execution thereof, shall cause a notice to be mailed to the proper post-office address of the person whose interest has been sold, and after the expiration of two weeks from the mailing of the notice, and if no other person has become entitled meanwhile for want of entry of the writ or otherwise, the master shall register the purchaser as owner, and shall, if required, issue to him a certificate of ownership in the prescribed form. R.S.O. 1937, c. 174, s. 67.

SALE FOR TAXES

Tax
purchasers,
registration
of caution
and subse-
quent entry
as owner.

68.—(1) Where land is sold for taxes, the purchaser may at any time after the sale lodge a caution against the transfer of the land, and upon the completion of the time allowed by law for redemption, and upon the production of the transfer of the land, with proof of the due execution thereof by the proper officer, the proper master of titles shall cause a notice to be sent by registered mail to the proper post-office address of the persons who appear upon the register to be interested in the land or served upon them or any of them personally or substitutionally by advertisement or otherwise as the master may direct, and after the expiration of three months from the mailing or service of the notice, shall, if no other person has become entitled by priority of registration, register the purchaser at the sale as owner of the land, with an absolute title, and shall, if required, issue to him a certificate of ownership in the prescribed form unless the registration is in the meantime stayed by order of the court, and in that case the registration shall not be made nor shall the certificate be issued, except in accordance with the order and direction of the court.

Notice to
persons
interested.

(2) If any person appearing upon the register to be interested in the land acquired such interest after the tax sale, the notice to be given to him shall require him, if he objects to the registration of the tax purchaser as owner, or if, having a charge only, he claims priority for such charge, to file his objection or claim verified by affidavit with the proper master, before the expiration of one month from the mailing or other service of the notice, and such master shall hear and determine such objection or claim upon notice to the parties interested and registration shall be made in accordance with the final

determination of the matter by the master or on appeal from him.

(3) Where a tax purchaser fails to lodge a caution or to lodge his deed for registration prior to the registration of the title of a purchaser or chargee, claiming from or through the person who was the registered owner at the time of the tax sale, for valuable consideration and without actual notice of the tax sale, he shall lose his priority. Forfeiture of priority of tax purchaser.

(4) Where it is made to appear to the master that the purchaser has so dealt with the land that a mechanic's lien has, or probably has, attached thereto subsequent to the sale and a claim of lien has been registered against the land the master may register the purchaser's title as subject to the claim of lien. R.S.O. 1937, c. 174, s. 68. Mechanic's lien.

CESSATION OF MECHANICS' LIENS

69. On its appearing to the satisfaction of the proper master of titles that a lien under *The Mechanics' Lien Act* has ceased to exist the master may make an entry accordingly, or an entry cancelling the claim, and the land affected shall thereby be released from the claim. R.S.O. 1937, c. 174, s. 69. Cancellation of liens registered under Rev. Stat., c. 227.

PART V

OTHER DEALINGS WITH REGISTERED LAND

REGISTERED OWNER ONLY MAY MAKE REGISTERED DISPOSITION

70.—(1) No person other than the registered owner shall be entitled to transfer or charge registered freehold or leasehold land by a registered disposition. Dealings with registered land. Imp. 38 & 39 V. c. 87, s. 49.

(2) Subject to the maintenance of the estate and right of such owner any person having a sufficient estate or interest in the land may create estates, rights, interests and equities in the same manner as he might do if the land were not registered. Unregistered estates, etc.

(3) Any person entitled to or interested in any unregistered estates, rights, interests or equities in registered land may protect the same from being impaired by any act of the registered owner by entering on the register such notices, cautions, inhibitions or other restrictions as are authorized by this Act. How protected.

(4) No person other than the registered owner thereof shall be entitled to transfer a registered charge by a registered disposition; but, subject to the maintenance of the right of Dealings with registered charge.

such owner, unregistered interests in a registered charge may be created in the same manner and with the same incidents, so far as the difference of the subject matter admits, in and with which unregistered estates and interests may be created in registered land. R.S.O. 1937, c. 174, s. 70.

RIGHT TO REGISTRATION

Right of transferees, and chargees, to registration.

71.—(1) Every transfer or charge signed by a registered owner, or others claiming by transfer through or under him, purporting to transfer or charge freehold or leasehold land, or an interest therein, capable of being registered, or purporting to transfer a charge, shall, until cut out by a conflicting registration, confer upon the person intended to take under such transfer or charge a right to be registered as the owner of such land or charge, and where a person applies to be registered under this section the proper master of titles may either forthwith, or after requiring such notices to be given as he deems expedient, register such applicant as owner, subject to such encumbrances, if any, as the condition of the title requires, notwithstanding that the transfer or charge has been executed or bears date prior to the entry of such transferor or chargor as the owner of the land or charge.

Application of devisees, etc., for registration.

(2) Any person claiming to be entitled to freehold or leasehold land, or to an interest therein, capable of being registered, or to a charge as devisee, heir, executor or administrator of a person who might have been registered under subsection 1, or any person claiming through or under such devisee, heir, executor or administrator may apply to be registered as owner of such land, interest or charge, and, if no conflicting registration has been made, may be so registered subject to the provisions of this section.

Mode of entry.

(3) On registering the applicant the master shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if such instrument had been duly presented for registration, or application for entry of transmission had been made in the proper order of time, and, as a preliminary step to the registration of the applicant, may enter any intermediate transferee, heir, executor or administrator as registered owner where that method is more convenient.

All persons entitled must apply.

(4) No application by a person claiming through or under a deceased person shall be allowed unless all the persons entitled to the whole of the estate of the deceased in the land are to be entered as owners.

(5) The master may in like manner enter as owner of freehold or leasehold land or of a charge any person who is entitled to such land or charge through the death of the owner, although the deceased had not been registered as owner, or any person who is entitled by virtue of the exercise of any power conferred by a statute, will, deed, or other instrument, whether the person so entitled claims directly from the deceased or directly under the power, or through any other person entitled by virtue of the death or power or through a succession of transfers or transmissions.

Entry of persons taking by transmission from unregistered owner.

(6) Where under an order of court any freehold or leasehold land or a charge is vested in any person the master shall, on due proof of the order, make such entries in the register as are necessary to give effect thereto, but if any person whose estate is affected by the order is not shown by the order to be a party to the cause or matter in which the order was made the applicant shall furnish such evidence as is requisite to show that he is bound thereby.

Registration under vesting order.

(7) Where any street, road or lane laid out on a plan registered in a land titles office has become a public highway, and has thereby become vested in a municipal corporation, the corporation may apply to the proper master to be entered as the owner thereof.

Entry on register of municipal corporation as owner of streets laid out on plan.

(8) Where a highway or part of it has been closed by the action of a municipal council, and such highway or part of it has been transferred by the municipal corporation without the corporation having been entered as owner of it, the transferee may apply to be entered as owner of the highway or part of it transferred to him, and upon due proof of the facts the master may enter such transferee as owner. R.S.O. 1937, c. 174, s. 71.

Entry as owner of transferee from a municipal corporation of closed-up street.

(NOTE.—As to registration of order of Mining Court, vesting land in co-owner who has paid acreage tax, see s. 19 of *The Mining Tax Act*, *Rev. Stat.*, c. 237.)

NOTICE OF LEASE

72.—(1) Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land where the term is for a life or lives, or is determinable on a life or lives, or where the period of the lease or agreement yet to run is three years or upwards, or where the occupation is not in accordance with such lease or agreement, may apply to the proper master of titles to register notice of such lease or agreement in the prescribed manner.

Lessee may apply for registration of notice of lease.

Imp. 38 & 39 v. c. 87, s. 50.

Lease by registered owner. Imp. 38 & 39 V. c. 87, s. 51.

(2) Where the lease is by the registered owner of the land the master may without notice to him enter on the register such notice thereof as he deems necessary.

Lease not by registered owner.

(3) Where the lease is not by the registered owner but his title appears to be subject thereto, or in the case of an agreement for a lease, the master, upon notice to such owner, may enter notice of the lease or agreement on the register.

How to be effected.

(4) The applicant shall deliver to the master the original lease or agreement or a copy thereof, and if the application is granted the master shall make a note on the register identifying the lease or agreement or copy so deposited, and the lease or agreement or copy so deposited shall be deemed to be the instrument of which notice is given.

Where registered owner concurs.

(5) If the registered owner concurs in a registration under subsection 2 or 3 notice may be entered in such manner as may be agreed upon.

Effect of such registrations.

(6) When so registered every registered owner of the land and every person deriving title through him, excepting owners of encumbrances registered prior to the registration of such notice, shall be deemed to be affected with notice of the lease or agreement as being an encumbrance on the land in respect of which the notice is entered.

Where lease or agreement is determined.

(7) Where notice of such lease or agreement has been registered the master, on proof to his satisfaction of the determination of the lease or agreement, shall in the prescribed manner note the determination on the register.

Notice of transfer or charge of lease.

(8) Where a notice of a lease or of an agreement for a lease has been registered under this section, a transferee or a chargee of the lease or agreement may apply to have a notice of his transfer or charge entered on the register.

Priority of notices.

(9) Unless the transferee or chargee has actual notice of a prior transfer or charge a transfer or charge in respect of which a notice has been entered shall take priority of one of which notice has not been entered. R.S.O. 1937, c. 174, s. 72.

NOTICE OF ESTATES IN DOWER OR BY THE CURTESY

Registration of notices of estates in dower or by the curtesy. Imp. 38 & 39 V. c. 87, s. 52.

73. Any person entitled to an estate in dower or by the curtesy in any registered land may apply in the prescribed manner to the proper master of titles to register notice of such estate, and the master, if satisfied of the title of such person to such estate, shall register notice of the same accord-

ingly in the prescribed form, and when so registered such estate shall be an encumbrance appearing on the register and shall be dealt with accordingly. R.S.O. 1937, c. 174, s. 73.

CAUTION AGAINST REGISTERED DEALINGS

74.—(1) Any person interested in any way in any land or charge registered in the name of any other person may apply for registration of a caution with the proper master of titles to the effect that no dealings with such land or charge be had on the part of the registered owner or other named person who is shown to have an interest in the land until notice has been served upon the cautioner.

Caution against registered dealings, how to be lodged.

Imp. 38 & 39
V. c. 87,
s. 53.

(2) The caution shall be supported by an affidavit made by the cautioner or his agent or solicitor in the prescribed form and containing the prescribed particulars.

Affidavit in support.

(3) A person interested under a lease, or agreement for a lease, of which notice has been entered on the register, or a person entitled to an estate in dower, or by the curtesy, of which notice has been entered on the register, shall not be entitled to lodge a caution in respect of such lease or agreement or estate in dower or by the curtesy.

No caution to be lodged in respect of certain interests.

(4) Every caution founded upon an execution or upon an allegation that a transfer, charge or other dealing is fraudulent shall be renewed before the expiration of five years from the date of lodging the same, otherwise it shall cease to have effect.

Renewal of certain cautions.

(5) Every caution founded upon an option shall be renewed before the expiration of five years from the date of lodging the same, otherwise it shall cease to have effect, and every such caution lodged five years before the 1st day of July, 1927, shall, unless renewed, cease to have effect on and after the 1st day of July, 1928. R.S.O. 1937, c. 174, s. 74.

Renewal of caution founded on an option.

75.—(1) After any such caution has been registered the proper master of titles shall not, without the consent of the cautioner, register any dealing with the land or charge until after notice to the cautioner warning him that his caution will cease to have any effect after the expiration of the prescribed number of days next ensuing the date at which the notice is served.

Cautioner entitled to notice of proposed registered dealings.

Imp. 38 & 39
V. c. 87,
s. 54.

(2) After the expiration of such time the master shall enter a cessation of the caution unless good cause for its continuance is shown.

Entering cessation of caution.

Effect of
cessation.

(3) Upon the caution so ceasing the land or charge shall be dealt with in the same manner as if no caution had been lodged.

When notice
of proposed
registered
dealings need
not be given
to cautioner.

(4) A notice to a cautioner shall not be required where the dealing proposed to be registered is under the authority of a judgment or order of court in a suit or proceeding to which the cautioner is a party, or where such dealing is under a power of sale contained in a charge or mortgage which is prior to the title under which the cautioner claims, and the cautioner has been served with a notice of the proposed exercise of the power of sale, and the caution is not in respect of the exercise of the power of sale, or where the dealing is of such a nature that it cannot detrimentally affect the interest of the cautioner as claimed in the affidavit filed with his caution, or where the transferee, chargee or other person desiring the registration of the dealing, is willing that the same should be registered, subject to the continuance of the caution, and the master thinks fit so to register it, and where a caution is continued, such continuance shall prevent further registrations of dealings by the registered owner until after notice to the cautioner, unless as in this section provided.

Where
caution
affects part
of land
transferred
only.

(5) Where a caution only affects part of the land dealt with by the transfer, charge or other instrument, the master may, upon the application in writing of the person desiring registration, or his solicitor, register the dealing as to the land not affected by the caution, and may subsequently, after notice to the cautioner, or with his consent, register the dealing as to the remainder of the land dealt with by the instrument or any part thereof, and the certificate of registration on the instrument shall show that the registration made in the first instance covers only part of the land embraced in it.

How master
may act.

(6) The master, upon receiving the consent of the cautioner to the registration of a dealing, may discharge the caution unless the consent provides for its continuance, or he may discharge the caution as to the land or charge to which the dealing applies, but he shall not do so where from the nature of the dealing he is of opinion that the continuance of the caution is contemplated. R.S.O. 1937, c. 174, s. 75.

Registered
owner ob-
jecting to
the registra-
tion of his
transferee.

76.—(1) Where the registered owner of any freehold or leasehold land has executed a transfer or a charge thereof, but claims that on account of special circumstances shown by affidavit the transferee or chargee should not be registered without notice to the registered owner, the proper master of titles may permit the registration of a caution by the registered owner.

(2) The registration of such caution shall stay the registration of the transfer until such notice has been served on the cautioner in accordance with section 75. R.S.O. 1937, c. 174, s. 76.

Registration of caution to stay registration of transfer in the meantime.

77. If before the expiration of the prescribed period the cautioner or some person on his behalf appears before the proper master of titles, and within such period, or such additional period as the master may allow, gives sufficient security to indemnify every person against any damage that may be sustained by reason of any dealing with the land or charge being delayed, the master may delay registering any dealing with the land or charge for such further period as he deems just, or may instead of taking the security register such dealing subject to the caution on any condition which he thinks fit to impose, as to security or otherwise, or may make such other order as he deems just. R.S.O. 1937, c. 174, s. 77.

Registered dealings delayed on security being given.
Imp. 38 & 39
V. c. 87,
s. 55.

78. A second caution by the same cautioner, or by any other person in respect of the same matter, shall not be lodged, or if lodged shall not be entered or have any effect without the special permission of the proper master of titles, which may be given either upon terms or without terms as he may think proper. R.S.O. 1937, c. 174, s. 78.

Entry of second caution.

SALE OF STANDING TIMBER

79.—(1) Where timber standing upon registered land is sold under an agreement in writing the purchaser, instead of entering a caution, may deposit the agreement with the proper master of titles, and the master, upon proof of the due execution thereof by the owner, shall register the same as an encumbrance upon the land by entering a memorandum upon the register referring to the instrument and giving shortly the effect thereof.

Deposit of agreement for sale of standing timber.

(2) When registering the agreement the purchaser shall by memorandum endorsed thereon or annexed thereto give his address for service.

Address for service.

(3) The registration of any such agreement may be vacated upon the consent in writing of the purchaser verified by affidavit of execution.

Discharge by consent.

(4) The registration of any such agreement may also be vacated if the purchaser fails, for the period of one month from the date of the mailing of the notice provided for in subsection 5, to satisfy the master that he still has rights under such agreement.

Discharge by master.

Notice.

(5) Upon proof to his satisfaction that the rights of the purchaser are at an end the master shall send a notice by registered mail addressed to the purchaser at his address for service, warning him that his agreement will cease to have effect after the expiration of one month from the mailing of such notice unless good cause for its continuance is shown. R.S.O. 1937, c. 174, s. 79.

INHIBITION AGAINST REGISTERED DEALINGS

Power of court or master to inhibit registered dealings.

Imp. 38 & 39
V. c. 87,
s. 57.

80.—(1) The court or the proper master of titles, upon the application of any person interested, made in the prescribed manner in relation to any registered land or charge, after directing such inquiries, if any, to be made and notices to be given, and after hearing such persons as the court or master deems expedient, may issue an order or make an entry inhibiting for a time, or until the occurrence of an event to be named in such order or entry, or generally until further order or entry, any dealing with registered land or with a registered charge.

Imposition of terms; discharge of order, etc.

(2) The court or the master may make an order or an entry and may impose any terms or conditions which may be deemed just, and may discharge the order or cancel the entry, with or without costs, and generally act in the premise in such manner as the justice of the case requires. R.S.O. 1937, c. 174, s. 80.

POWER OF REGISTERED OWNER TO IMPOSE RESTRICTIONS

Power to place restrictions on register.

Imp. 38 & 39
V. c. 87,
s. 58.

81.—(1) Where the registered owner of freehold or leasehold land or of a charge desires to place restrictions on transferring or charging the land or charge he may apply to the proper master of titles to make an entry on the register that no transfer shall be made or charge created unless the following things, or such of them as the owner may determine, are done, that is to say,

- (a) unless notice of any application for a transfer or for the creation of a charge is transmitted by registered post to such address as he may specify to the master;
- (b) unless the consent of some person or persons, to be named by the owner, is given to the transfer or the creation of a charge; or
- (c) unless some other matter or thing is done as may be required by the applicant and approved by the master.

(2) If the master is satisfied of the right of the applicant to give such directions he shall make a note of them on the register, and no transfer shall be made or charge created except in conformity therewith.

Master to enter restrictions in register.
Imp. 38 & 39
V. c. 87,
s. 59.

(3) The master shall not be required to enter any direction, except upon such terms as to payment of the fees and otherwise as may be prescribed, or to enter any restriction that he may deem unreasonable or calculated to cause inconvenience.

Discretion of the master.

(4) Any such direction may at any time be withdrawn or modified at the instance of all the persons for the time being appearing by the register to be interested in such direction, and shall also be subject to be set aside by the court. R.S.O. 1937, c. 174, s. 81.

Directions may be withdrawn or set aside.

PART VI

SUPPLEMENTAL PROVISIONS

NOTICE OF REGISTERED INSTRUMENTS

82. No person other than the parties thereto shall be deemed to have any notice of the contents of any instruments other than those mentioned in the existing register of title of the parcel of land or which have been duly entered in the books of the office kept for the entry of instruments received or are in course of entry. R.S.O. 1937, c. 174, s. 82.

Effect of unregistered instruments.

CAUTION AGAINST ENTRY OF LAND ON REGISTER

83.—(1) Any person having or claiming such an interest in any unregistered land as entitles him to object to any disposition thereof being made without his consent may apply for the registration of a caution with the proper master of titles to the effect that the cautioner is entitled to notice in the prescribed form, and to be served in the prescribed manner, of any application that may be made for the registration of such land.

Caution against registration of land.

Imp. 38 & 39
V. c. 87,
s. 60.

(2) Every caution under this section shall be renewed before the expiration of five years from the date of lodging the same, otherwise it shall cease to have effect.

Renewal of every five years.

(3) No caution registered under this section in respect of any unpatented land shall be of any validity unless the description contained therein specifies the land in accordance with the description subsequently contained in the patent, or describes the same in such manner that the master may know that the description in the caution is intended to affect the land described in the patent. R.S.O. 1937, c. 174, s. 83.

Unpatented land.

CAUTIONS AS TO ACTIONS PENDING

Lis pendens
not to be
registered.

84. A certificate of *lis pendens* affecting land shall not be registered, but any party to an action, or his solicitor, or any person claiming to be interested in the action, may lodge a caution subject to the same conditions as in other cases. R.S.O. 1937, c. 174, s. 84.

GENERAL PROVISIONS AS TO CAUTIONS

Cautioner
entitled to
notice of
proposed
registration
of land.

Imp. 38 & 39
V. c. 87,
s. 62.

85. After a caution has been registered in respect of any unregistered land, and while the same is in force, registration shall not be made of such land until notice has been served on the cautioner to appear and oppose such registration, and until the prescribed time has elapsed after the date of the service of such notice, or the cautioner has appeared, whichever may first happen. R.S.O. 1937, c. 174, s. 85.

Caution to
be supported
by affidavit.
Imp. 38 & 39
V. c. 87,
s. 61.

86. Every caution shall be supported by an affidavit in the prescribed form stating the nature of the interest of the cautioner, the land to be affected by the caution and such other matters as may be prescribed. R.S.O. 1937, c. 174, s. 86.

CAUTION WRONGFULLY LODGED

Compensation for
improper
lodging of
caution.

Imp. 38 & 39
V. c. 87,
s. 63.

87. Any person who lodges a caution without reasonable cause shall be liable to make to any person who may sustain damage by the lodging of such caution such compensation as may be just, and such compensation shall be deemed to be a debt due from the person who has lodged the caution to the person who has sustained damage. R.S.O. 1937, c. 174, s. 87.

Effect of
caution.
Imp. 38 & 39
V. c. 87,
s. 64.

88. A caution shall not prejudice the claim or title of any person, and shall have no effect except as in this Act provided. R.S.O. 1937, c. 174, s. 88.

COSTS

Payment
of costs.

Imp. 38 & 39
V. c. 87,
s. 73.

89.—(1) Any applicant under this Act shall be liable *prima facie* to pay all costs, charges and expenses incurred by or in consequence of his application, except where parties whose rights are sufficiently secured without their appearance object, or where any costs, charges or expenses are incurred unnecessarily or improperly.

Scale of
costs.

(2) The proper master of titles may order costs, either as between party and party or as between solicitor and client, to be paid by or to any person, party to any proceeding under this Act, and may give directions as to the fund out of which

any costs shall be paid, regard being had to the provisions of subsection 1.

(3) Any person aggrieved by an order of the master made under this section may appeal in the prescribed manner to the court, which may annul or, with or without modification, confirm the order of the master. Appeal from master's order.

(4) If any person disobeys any order of the master made under this section the master may certify such disobedience to the court, and thereupon, subject to such right of appeal, the order may be enforced in the like manner and by the like proceedings as if it were an order of the court. R.S.O. 1937, c. 174, s. 89. Enforcement of order.

DOUBTFUL QUESTIONS OF LAW OR FACT

90.—(1) Where upon the examination of a title or upon an application with respect to registered land the proper master of titles entertains a doubt as to any matter of law he may state a case for the opinion of the court and may name the parties to it, and where he entertains a doubt as to any matter of fact he may direct an issue to be tried for the purpose of determining such fact. Master may state a case for opinion of court, or direct issue. Imp. 38 & 39 V. c. 87, s. 74.

(2) The practice and procedure on and incidental to a case stated or on an issue directed under this section and the right to appeal from the judgment or other determination thereof shall be the same as on a special case or on an issue directed in an action. Practice.

(3) The powers conferred by this section shall not be exercised by a local master of titles except with the approval of the master of titles at Toronto. R.S.O. 1937, c. 174, s. 90. Exercise of powers.

91.—(1) Where any infant, mentally defective person, mentally incompetent person, person of unsound mind, person absent from Canada, or person yet unborn is interested in the land in respect of the title to which a question arises as aforesaid, any person interested in the land may apply to the court for a direction that the opinion of the court to which the case is stated under this Act shall be conclusively binding on such infant, mentally defective person, mentally incompetent person, person of unsound mind, person absent from Canada, or unborn person. Where persons absent, unborn or under disability interested. Imp. 38 & 39 V. c. 87, s. 76.

(2) The court shall hear the allegations of all parties appearing before it, and may disapprove altogether or may approve, either with or without modification, of the directions of the proper master of titles in respect to any case stated as to the title of land. Powers of court on stated case.

Power to
appoint
guardian,
etc.

(3) The court may also, if necessary, appoint a guardian or other person to appear on behalf of any infant, mentally defective person, mentally incompetent person, person of unsound mind, person absent from Canada, or unborn person.

Order where
persons
absent,
unborn or
under
disability.

(4) The court, if satisfied that the interests of the person under disability, absent, or unborn will be sufficiently represented in any case, shall make an order declaring that all persons, with the exceptions, if any, named in the order, are to be conclusively bound, and thereupon all persons, with such exceptions, shall be conclusively bound by the decision of the court. R.S.O. 1937, c. 174, s. 91.

Imp. 38 & 39
V. c. 87,
s. 77.

CERTIFICATES OF OWNERSHIP, OFFICE COPIES OF LEASES, AND CERTIFICATES OF CHARGE

Loss of land
certificate, or
certificate of
charge, or
office copy of
lease.

92.—(1) If any certificate of ownership or office copy of a registered lease or certificate of charge is lost, mislaid or destroyed, the proper master of titles, upon being satisfied of that fact, may grant a new certificate of ownership or office copy or certificate of charge in place of the former one.

Imp. 38 & 39
V. c. 87,
s. 78.

Renewal of
land
certificate, or
certificate of
charge, or
office copy of
lease.

(2) The proper master of titles, upon the delivery up to him of a certificate of ownership or of an office copy of a registered lease or of a certificate of charge, may grant a new certificate of ownership or office copy of lease or certificate of charge in place of the one delivered up. R.S.O. 1937, c. 174, s. 92.

Imp. 38 & 39
V. c. 87, s. 79.

Land
certificate,
certificate of
charge, and
office copy of
lease to be
evidence.

93. A certificate of ownership or certificate of charge shall be *prima facie* evidence of the matters therein contained, and the office copy of a registered lease shall be evidence of the contents of the registered lease. R.S.O. 1937, c. 174, s. 93.

Imp. 38 & 39
V. c. 87, s. 80.

Effect of de-
posit of land
certificate, or
of office copy
of lease.

94. Subject to any registered estates, charges, or rights, the deposit of the certificate of ownership in the case of freehold land, and of the office copy of the registered lease in the case of leasehold land for the purpose of creating a lien on the land to which such certificate or lease relates, shall be deemed equivalent to a deposit of the title deeds of the land. R.S.O. 1937, c. 174, s. 94.

Imp. 38 & 39
V. c. 87, s. 81.

INCORPOREAL HEREDITAMENTS, MINING RIGHTS AND EASEMENTS

Registry of
special her-
editaments.

95.—(1) The proper master of titles may register the owner of any incorporeal hereditament of freehold tenure, enjoyed in gross, also the owner of any mines or minerals where the ownership of the same has been severed from the ownership of the land, in the same manner and with the same incidents in and with which he is by this Act empowered to

Imp. 38 & 39
V. c. 87, s. 82.

register the owner of land, or as near thereto as circumstances admit.

(2) Where an easement in or over unregistered land is granted as appurtenant to registered land the master, after such examination as he deems necessary, may enter such easement in the register of the dominant land with a declaration that the title thereto is absolute, qualified or possessory, or otherwise as the case may require, and shall cause to be registered in the proper registry division a certificate of such entry.

Registration of easements when dominant land registered.

(3) Where an easement in or over registered land is granted as appurtenant to unregistered land the master may issue a certificate setting out such easement and the land to which it is appurtenant, which may be registered in the registry division in which the land is situate, and he shall note on the register that such certificate has been issued. R.S.O. 1937, c. 174, s. 95.

Certificate of easement when dominant land unregistered.

96.—(1) In the case of lands registered under this Act no title to any ores, mines or minerals shall be held to have passed or shall pass under section 3 of *The Mines Act, 1892*, or under section 3 of *The Mines Act*, being chapter 36 of *The Revised Statutes of Ontario, 1897*, or under section 3 of *An Act to Amend the Mines Act*, being chapter 13 of the Statutes of Ontario, 1900, until the registered owner has had himself entered as owner of such ores, mines or minerals, or until his transferee or chargee has procured the master to make the entries authorized by subsection 3.

Title to minerals not to pass until owner entered on land register. 1892, c. 9. 1900, c. 13.

(2) In case of lands registered under this Act no title to any ores, mines or minerals shall be held to have passed or shall pass under chapters 16, 17 and 18 of the Statutes of Ontario, 1908, or under section 58 or 59 of *The Public Lands Act*, until the registered owner has furnished to the proper master of titles a certificate of the Minister of Mines, or of the Deputy Minister, that the same were at the time of the passing of the said Acts the property of the Crown and had not been staked out, recorded, leased or granted under *The Mining Act* or under any statutory regulation previously in force or that, having been so staked out, recorded, leased or granted, all rights under such staking out, recording, leasing or granting have been abandoned, forfeited or cancelled, or otherwise have ceased, and until such owner has had himself registered as owner of the mines, ores or minerals or his transferee or chargee has procured the master to make the entries authorized by subsection 3.

Certificate of Minister or Deputy when required.

Rev. Stat., cc. 309, 236.

Passing of title to minerals on patent.

Transfers
or charges
heretofore
made.

(3) If any registered owner of lands has assumed to transfer or charge any mines, ores or minerals reserved by the Crown and coming within the said Acts the transferee or chargee may furnish to the said master the certificate of the Minister or Deputy Minister as above provided, and shall have the right to apply to be registered as such transferee or chargee, and the said master may make all proper entries in order to define the interests of the persons then appearing to be entitled to the mines, ores or minerals or any interest therein.

Claims
against
Assurance
Fund.

(4) No claim shall be sustained against the Assurance Fund in respect of any right arising under any of the said Acts by reason of any dealing with any ores, mines or minerals which were prior to the passing of such Act subject to the reservation thereof to the Crown. R.S.O. 1937, c. 174, s. 96.

GENERAL PROVISIONS

Trusts not to
be entered.
Imp. 38 & 39
V. c. 87,
s. 83, part.

97.—(1) There shall not be entered on the register or be receivable any notice of any trust, express, implied or constructive.

Description
of owner as
a trustee.

(2) Describing the owner of any freehold or leasehold land, or of any charge as a trustee, whether the beneficiary or object of the trust is or is not mentioned, shall not be deemed a notice of a trust within the meaning of this section, nor shall such description impose upon any person dealing with such owner the duty of making any inquiry as to the power of the owner in respect of the land or charge or the money secured by the charge, or otherwise; but, subject to the registration of any caution or inhibition, such owner may deal with the land or charge as if such description had not been inserted.

Owners
described as
trustees to be
joint tenants.

(3) Where two or more owners are described as trustees the property shall be held to be vested in them as joint tenants unless the contrary is expressly stated.

Saving as to
charge by a
company as
security.

(4) Nothing in this section shall prevent the registration of a charge given by an incorporated company for the purpose of securing bonds or debentures of the company, but the registration of any such charge shall not be deemed a guarantee that the proceedings necessary to render the same valid have been duly taken. R.S.O. 1937, c. 174, s. 97.

Undivided
shares.
Imp. 38 & 39
V. c. 87,
s. 83, part.

98.—(1) No person shall be registered as owner of any undivided share in any freehold or leasehold land or of any charge apart from the other share or shares.

(2) The share of each owner may be stated, and where the extent of his interest appears on the register, or by the statement of his co-owners, he may transfer or charge his share, or he may without such statement transfer his share to his co-owners. R.S.O. 1937, c. 174, s. 98.

99.—(1) Where the number of persons who may be registered as the owners of the same freehold or leasehold land or charge is limited by a rule, a number of persons exceeding the number prescribed shall not be registered as owners of such land or charge, and if the number of persons showing title exceeds the prescribed number, such of them not exceeding the prescribed number, as may be agreed upon, or as the proper master of titles in case of difference decides, shall be registered as owners.

Rights of owner in such case.

Restricting number of persons who may be registered as owners.

(2) Upon the registration of two or more persons as owners of the same land or of the same charge an entry may, with their consent, be made on the register to the effect that when the number of such owners is reduced below a certain specified number no registered disposition of such land or charge shall be made except under the order of the court.

Special entry in certain cases.

(3) In such a case the words "No survivorship" in the entry shall be construed to mean that if any one of the owners should die no registered disposition of the land or charge shall be made except under order of the court. R.S.O. 1937, c. 174, s. 99.

"No survivorship".

100.—(1) Registered land shall be described in such manner as the proper master of titles deems best calculated to secure accuracy, but such description shall not be conclusive as to the boundaries or extent of the land.

Description of land.

(2) No alteration shall be made in the registered description of land, except under the order of the court, or under section 123, or by way of explanation, or under rules of court; but this provision shall not extend to registered dealings with registered land in separate parcels, although such land was originally registered as one parcel. R.S.O. 1937, c. 174, s. 100.

No alteration to be made in registered description.

101.—(1) There may be registered as annexed to any land which is being or has been registered, subject to general rules and in the prescribed manner, a condition or covenant that such land or any specified portion thereof is not to be built on, or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land.

Annexation of conditions or covenants to registered land.

Imp. 38 & 39 V. c. 87, s. 84.

Notice and
modification
or discharge
of covenants.

(2) The first owner and every transferee, and every other person deriving title from him, shall be deemed to be affected with notice of such condition or covenant; but any such condition or covenant may be modified or discharged by order of the court, on proof to the satisfaction of the court that the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant.

Covenants
or conditions
running with
land.

(3) The entry on the register of a condition or covenant as running with or annexed to land shall not make it run with the land, if such covenant or condition on account of its nature, or of the manner in which it is expressed, would not otherwise be annexed to or run with the land.

Subsequent
transfers.

(4) Where a condition or covenant has been entered on the register as annexed to or running with land, and a similar condition is contained in a subsequent transfer or a similar covenant is in express terms entered into with the owner of the land by a subsequent transferee, or *vice versa*, it shall not be necessary to repeat such condition or covenant on the register or to refer thereto, but the proper master of titles may, upon a special application, enter such condition or covenant either in addition to or in lieu of the condition or covenant first mentioned. R.S.O. 1937, c. 174, s. 101.

Registered
land to be
within Rev.
Stat., c. 400.

Imp. 38 & 39
V. c. 87,
s. 85.

102. All the provisions of *The Trustee Act* which are not inconsistent with the provisions of this Act shall apply to land and charges registered under this Act, but this enactment shall not prejudice the applicability to such land and charges of any provisions of that Act relating to land or choses in action. R.S.O. 1937, c. 174, s. 102.

Indemnity
of master of
titles.

Imp. 38 & 39
V. c. 87,
s. 86.

103. Neither the master of titles, nor any local master of titles, nor any person acting under their authority or under any order of court or general rule, shall be liable to any action, suit, or proceeding for or in respect of any act or matter *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers conferred by this Act, or of any such order or general rule. R.S.O. 1937, c. 174, s. 103.

INSTRUMENTS NEED NOT BE SEALED

Charges and
transfers
may be made
without seal.

104. Notwithstanding any statute or any rule of law, any charge or transfer of land registered under this Act may be duly made by an instrument not under seal, and if so made the instrument and every agreement, stipulation and condition therein shall have the same effect for all purposes as if it were made under seal. R.S.O. 1937, c. 174, s. 104.

MARRIED WOMEN

105. A married woman shall for the purposes of this Act be deemed a *feme sole* and may execute without seal any bar of dower or other instrument required under this Act, and her husband need not be a party thereto, and she may bar her dower in any land sold by her husband or mortgaged by him to a purchaser or mortgagee for value although she is under the age of 21 years. R.S.O. 1937, c. 174, s. 105.

Execution of
instruments
by married
women.

PERSONS UNDER DISABILITY

106.—(1) In case any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceeding under this Act is an infant, a mentally defective person or a mentally incompetent person, the guardian of the infant, or committee of the estate of the mentally defective person or mentally incompetent person, may make such application, give such consent, do such act and be party to such proceedings as such person, if free from disability might have made, given, done or been party to, and shall otherwise represent such person for the purposes of this Act.

Where any
party is a
minor or
mentally
incompetent.

Imp. 38 & 39
V. c. 87, s. 88.

(2) If the infant has no guardian, or the mentally defective person or mentally incompetent person has no committee of his estate, or if a person yet unborn is interested, the Official Guardian shall act with like power, or the proper master of titles may appoint a person with like power to act for the infant, mentally defective person, mentally incompetent person or person yet unborn. R.S.O. 1937, c. 174, s. 106.

Idem.

PLANS

107.—(1) Where land is surveyed and subdivided for the purpose of being sold or conveyed in lots by reference to a plan which has not been already registered the person making the survey and subdivision shall register in the proper land titles office a plan of the land on a scale of not less than one inch to every four chains.

Plan of lots
to be sold by
plan to be
registered.

(2) The plan shall show in black India ink the number of the township, city, town or village lots and range or concession as originally laid out, and all the boundary lines thereof within the limits of the land being subdivided, except where the plan is a subdivision of a lot or lots on a former plan, in which case it shall show in ink of another colour the numbers or other distinguishing marks of the lot or lots subdivided and by broken lines the boundary lines thereof.

Contents of
plan.

Each lot to be numbered and scale shown.

(3) The number or other distinguishing mark, and the width both front and rear, shall be marked on each lot of the subdivision in black India ink, and the scale shall also be marked on the plan and such information as will show the depth of the lots and the courses of all the boundaries of or the division lines between the same, and the governing line or lines to which such courses are referred shall also be indicated.

Posts or monuments.

(4) The position of all the posts or monuments, if any, planted by the surveyor, or of other objects marking the boundaries of any of the lots or the corners thereof shall also be shown.

Highways and topographical features.

(5) The plan shall also show all roads, streets, railway land, rivers, canals, streams, lakes, mill-ponds, marshes or other marked topographical features within the limits of the land so subdivided, together with such other information as is required to show distinctly the position of the land.

Designation of lots.

(6) On every such plan the lots shall be so described and designated by numbers, letters or words, that there shall not be more than one lot on such plan described and designated by the same number, letter or word, notwithstanding that the lots are on different sides of the same street or on different streets or in different blocks, and where the designation is by numbers the lots shall be numbered consecutively.

To show what land is laid out.

(7) The plan shall also show distinctly what land is being laid out thereby, and shall by proper colouring distinguish such land from all other land shown on the plan, but not in fact laid out thereby, and the last-mentioned land shall be shown uncoloured.

Mounting and size of plan.

(8) The plan shall be mounted on stiff pasteboard of good quality, and when it exceeds 30 inches in length by 24 inches in width shall be folded so as not to exceed that size, and no such plan shall be less than 24 inches in length or 12 inches in width.

To be signed by owner and certified by land surveyor.

(9) The plan before being registered shall be signed by the person or the chief officer of the corporation by whom or on whose behalf the same is deposited, and shall be certified by an Ontario land surveyor in the prescribed form.

Master may require explanation.

(10) The proper master of titles, before filing the plan, may require evidence to be given explaining any seeming discrepancy between the measurements on the plan and the description of the land in the register, or may require evidence respecting any other matter of which he requires explanation.

(11) Every person who deposits a plan of any survey or subdivision of land made by him for the purpose of selling or conveying the land in lots, or of any alteration of a previous survey or subdivision, shall at the same time deposit a duplicate of the plan, and the master shall endorse thereon a certificate showing the number of the plan and the date when the duplicate original thereof was filed with him, and the same shall be delivered by the master to the treasurer or assessment commissioner of the local municipality in which the land is situate upon request and without fee.

Delivery of plans to municipal treasurers.

(12) The master shall not file or register any plan unless a duplicate thereof is deposited in accordance with sub-section 11.

Deposit of duplicate plan.

(13) In the case of surveys hereafter made the plan shall be accompanied by a copy certified by the surveyor by whom the survey was made to be a true copy of the field notes of the survey, if any. R.S.O. 1937, c. 174, s. 107.

Field notes of surveyor.

108.—(1) Where lands in an unsurveyed township in a district have been or are granted by the Crown and the lands are subsequently surveyed and laid out into lots and concessions in whole or in part, such survey shall be made in accordance with the provisions of *The Surveys Act* as made applicable by the terms of the patent or Order in Council granting such township and the plan of such survey shall be registered in the proper office of land titles.

Survey of township subsequent to grant from Crown.

Rev. Stat., c. 381.

(2) The said plan shall be prepared as nearly as may be in accordance with section 107, but the scale need not be greater and shall not be less than one inch to forty chains. R.S.O. 1937, c. 174, s. 108.

Requirements as to plans.

109.—(1) In cases not provided for by section 107 the proper master of titles may require a person applying for registration to deposit a plan of the land with the several measurements marked thereon, certified by an Ontario land surveyor, and as many counterparts as may be required, upon one of the following scales:

Master may require plan to be registered in certain cases.

- (a) If the land, or the part thereof proposed to be transferred or dealt with, is of less area than one acre the plan shall be on a scale not less than one inch to two chains.
- (b) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than one acre, but not exceeding five acres, the plan shall be on a scale not less than one inch to five chains.

Rules 50 and 51 made under Imp. 38 & 39 V. c. 87.

(c) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than five acres, but not exceeding eighty acres, the plan shall be on a scale not less than one inch to ten chains.

(d) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than eighty acres, the plan shall be on a scale of one inch to twenty chains.

Owner to
verify plan.

(2) The owner shall sign the plan and verify its accuracy before some person authorized under section 136.

Effect of
refusal.

(3) If the owner neglects or refuses to comply with such requirements the master may refuse to proceed with the registration of the transfer or dealing.

Subsequent
subdivisions.

(4) Subsequent subdivisions of the same land may be delineated upon a duplicate of the plan so deposited if the scale upon which it is drawn permits of that being done in conformity to subsection 1, and the accuracy of the delineation of each such subdivision shall be certified and verified in the manner prescribed by subsections 1 and 2.

Where plan
includes
parts of
different sub-
divisions.

(5) Where the land of which a plan is directed to be deposited includes parts of different subdivisions the plan shall represent the whole of each subdivision and shall indicate the location of the land to be transferred; but this shall not be necessary in the case of lots in a city, town or village, the plan of which has been registered, unless the master otherwise directs. R.S.O. 1937, c. 174, s. 109.

Plan of
street, road,
lane or
common.

110. Where a plan of a subdivision lays out any portion of the land as a street, road, lane or common, it shall not be registered except, on the application of the owner of the land subdivided, with the consent in writing of all persons who are registered as mortgagees or chargees thereof. R.S.O. 1937, c. 174, s. 110.

Instruments
must con-
form to plan.

111. All instruments affecting the land or any part thereof lodged with the proper master of titles after a plan is registered shall conform and refer thereto, or registration shall not be had thereunder unless the master under special circumstances deems it proper to accept the same. R.S.O. 1937, c. 174, s. 111.

Where Rev.
Stat., c. 277
applies.

112. No plan of survey or subdivision to which *The Planning Act* applies shall be registered unless approved under that Act. 1947, c. 101, s. 12.

113.—(1) No plan, although registered in an office of land titles, shall be binding on the person registering the same, or upon any other person, unless a sale has been made according to such plan, and in all cases amendments or alterations thereof may be ordered to be made at the instance of the person registering the same or his assigns, or of the owner for the time being of any of the land covered by the plan, Effect and amendment of plan.

(a) by the Supreme Court or by a judge thereof;

(b) where the land is not in the County of York or City of Toronto by a judge of the county or district court of the county or district in which the land lies; or

(c) where the land is in the County of York or City of Toronto by the master of titles,

if on application for the purpose duly made, and upon hearing all persons concerned, it is thought just so to order, and upon such terms and conditions as to costs and otherwise as may be deemed just and expedient.

(2) Any such application may be made either by the person filing the plan or by the owner for the time being of any of the land covered thereby. Who may apply.

(3) An appeal shall lie from any such decision to the Court of Appeal. Appeal.

(4) No part of a road, street, lane or alley upon which any such lot abuts, or which connects any such lot with, or affords access therefrom to the nearest public highway, shall be altered or closed up without the consent of the owner of such lot, but nothing herein shall interfere with the powers of municipal corporations with reference to highways. R.S.O. 1937, c. 174, s. 113. No alteration or closing of street, etc., without consent of owner.

114. Where all the lots on any plan of subdivision registered in a registry office are registered under this Act, the proper master of titles may require the registrar to deliver the plan to him to be registered in his office, and the registrar shall thereupon deliver the same taking a receipt therefor. R.S.O. 1937, c. 174, s. 114. Transfer of plans from registry offices.

NOTICES

115.—(1) Every person whose name is entered on the register as owner of freehold or leasehold land or of a charge, or as cautioner, or as entitled to receive any notice, or in any other character, shall furnish a place of address in Ontario, and may from time to time substitute some other place of address in Ontario for that originally furnished. Address of persons on register. Imp. 38 & 39 V. c. 87, s. 89.

In case
address not
furnished.

(2) If any such person fails to furnish a place of address for service a notice sent by post addressed to such person at the place named in the registered instrument under which he claims as his place of residence shall be sufficient unless the proper master of titles otherwise directs.

Service of
notices.

Imp. 38 & 39
V. c. 87, s. 90.

(3) Every notice by this Act required to be given to any person shall be served personally, or sent by registered post directed to such person at the address or last address, as the case may be, furnished, and unless returned shall be deemed to have been received by the person addressed within such period, not less than seven days exclusive of the day of posting, as may be prescribed.

Return of
notices by
post-office.

Imp. 38 & 39
V. c. 87, s. 91.

(4) The envelope containing any notice under this Act shall have printed thereon the words "Office of Land Titles", and a request in the prescribed manner for the return thereof to the office of land titles in case the person to whom the notice is addressed cannot be found.

Master to
act on
return of
notice.

(5) On the return of any envelope containing any notice the master shall act in the matter requiring the notice to be given in the manner prescribed. R.S.O. 1937, c. 174, s. 115.

Purchasers
for value not
affected by
omission to
send notices.
Imp. 38 & 39
V. c. 87, s. 92.

116. A purchaser for valuable consideration when registered shall not be affected by the omission to send any notice by this Act directed to be given, or by the non-receipt thereof. R.S.O. 1937, c. 174, s. 116.

SPECIFIC PERFORMANCE

Power of
court in
action for
specific
performance.

Imp. 38 & 39
V. c. 87, s. 93.

117.—(1) Where an action is instituted for the specific performance of a contract relating to registered land, or a registered charge, the court having cognizance of the action may by such mode as it deems expedient cause all or any persons who have registered estates or rights in the land or charge, or have entered notices, cautions or inhibitions against the same to appear in the action and show cause why the contract should not be specifically performed, and the court may direct that any order made by the court in the action shall be binding on such persons or any of them.

Costs in
action for
specific
performance.
Imp. 38 & 39
V. c. 87, s. 94.

(2) All costs awarded to any person so appearing may, if the court so orders, be taxed as between solicitor and client. R.S.O. 1937, c. 174, s. 117.

RECTIFICATION OF THE REGISTER

Establish-
ment of
adverse title
to land.

118. Subject to any estates or rights acquired by registration in pursuance of this Act, where any court of competent jurisdiction has decided that any person is entitled to any

estate, right, or interest in or to any registered land or charge, and as a consequence of such decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as may be deemed just. R.S.O. 1937, c. 174, s. 118. Imp. 38 & 39
V. c. 87, s. 95.

119. Subject to any estates or rights acquired by registration in pursuance of this Act, if any person is aggrieved by any entry made, or by the omission of any entry from the register, or if default is made or unnecessary delay takes place in making any entry in the register, any person aggrieved by such entry, omission, default or delay may apply to the court in the prescribed manner for an order that the register may be rectified, and the court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for the rectification of the register. R.S.O. 1937, c. 174, s. 119. Register to
be rectified
under order
of court.
Imp. 38 & 39
V. c. 87, s. 90.

120. The court, on any application, or in any other matter or proceeding coming before it under this Act, shall have the like authority in respect of costs, as it has in any ordinary proceeding within its jurisdiction. R.S.O. 1937, c. 174, s. 120. Costs.

121. The master of titles and the local masters of titles shall obey the order of any competent court in relation to any registered land on being served with the order or an office copy thereof. R.S.O. 1937, c. 174, s. 121. Master to
obey orders
of court.
Imp. 38 & 39
V. c. 87, s. 97.

122.—(1) Upon the conviction under this Act, or under the criminal law of Canada, of any person for an offence whereby such person fraudulently procured an entry on the register by reason of which any person other than the rightful owner has become the registered owner of land, or by reason of which land under this Act has been wrongfully encumbered, the proper master of titles, on the application of the rightful owner, may cancel such wrongful entry and may enter the rightful owner as the registered owner of the land. Cancellation
of fraudulent
entries.

(2) If while the wrongful entry was subsisting on the register any innocent person has been registered as the owner of any charge upon or any estate, right or interest in the land the master, instead of cancelling the wrongful entry, may make an entry on the register stating the fact of the conviction and revesting the land in the rightful owner subject to such charge, estate, right or interest, and the land shall thereupon be vested in the person named in such last-mentioned entry in accordance with the terms thereof. Where land
has been
transferred
to innocent
holder.

(3) This section shall apply to past as well as future cases. R.S.O. 1937, c. 174, s. 122. Application
of section.

Entry of
caution by
master in
case of error.

123.—(1) The proper master of titles may *sua sponte* and without affidavit enter a caution to prevent the dealing with any registered land when it appears to him that an error has been made in any entry by misdescription of such land or otherwise.

Correction
of errors.

(2) Subject to the rules the master, before the receipt of any conflicting instrument, or after notifying all persons interested, upon such evidence as appears to him sufficient, may correct errors and supply omissions in certificates of ownership or of charge, or in the register, or in any entry therein, and may call in any outstanding certificate for that purpose.

Restoration
of covenants
or conditions
and com-
pensation
therefor.

(3) Where the master under this section restores to the register any covenant or condition he may do so with such modifications as he deems advisable so as to do the least possible injury to the persons affected by their omission or by their restoration, and upon notice to the Attorney-General, at the same time or subsequently, may determine what damages, if any, shall be paid to any of the persons claiming to have been injuriously affected by the omission of the covenants or by their restoration. R.S.O. 1937, c. 174, s. 123.

Correction
of errors in
patents after
registration.
Rev. Stat.,
c. 309.

124. Where land has been registered under this Act, and the Minister of Lands and Forests under *The Public Lands Act* directs an incorrect patent to be cancelled and a correct one to be issued in its stead, the proper master of titles, upon receipt of the subsequent patent, if no conflicting instrument has been received, shall amend the entry on the register to accord with the amending patent, or if a conflicting instrument has been received, the master, after notifying all persons interested, may make such amendment. R.S.O. 1937, c. 174, s. 124.

FRAUD

Fraudulent
dispositions.

Imp. 38 & 39
V. c. 87, s. 98.

125. Subject to the provisions of this Act, with respect to registered dispositions for valuable consideration, any disposition of land or of a charge on land which, if unregistered, would be fraudulent and void shall, notwithstanding registration, be fraudulent and void in like manner. R.S.O. 1937, c. 174, s. 125.

Certain
fraudulent
acts declared
to be
offences.

Imp. 38 & 39
V. c. 87,
s. 100.

126.—(1) Any person who fraudulently procures, attempts to fraudulently procure, or is privy to the fraudulent procurement of any entry on the register, or of any erasure from the register or alteration of the register, shall be guilty of an offence under this Act and on summary conviction shall be liable to imprisonment for a term of not more than two years,

with or without hard labour, or to be fined such sum not exceeding \$1,000 as the court before which he is tried may adjudge.

(2) Any such entry, erasure or alteration shall be void ^{Fraudulent entries, etc.,} as between all parties or privies to the fraud. R.S.O. 1937, ^{to be void.} c. 174, s. 126.

(NOTE.—*See the provisions of the Criminal Code (Canada), as to the fraudulent registration of titles and making false affidavits.*)

ASSURANCE FUND

127.—(1) An assurance fund shall be formed for the ^{Assurance fund.} indemnity of persons who may be wrongfully deprived of land or some estate or interest therein by reason of the land being brought under the provisions of this Act, or by reason of some other person being registered as owner through fraud, or by reason of any misdescription, omission or other error in a certificate of ownership of land or of a charge or in any entry on the register.

(2) In order to constitute such fund there shall be payable ^{Constitution of fund.} on the first registration under this Act of any land with an absolute or qualified title, in addition to all other fees, a sum equal to one-fourth of one per cent of the value of the land apart from the buildings or fixtures thereon, and one-tenth of one per cent of the value of the buildings and fixtures, and with a possessory title one-eighth of one per cent of the value of the land apart from the buildings or fixtures thereon, and one-twentieth of one per cent of the value of the buildings and fixtures and on the application to change a possessory title to an absolute title, one-eighth of one per cent of the value of the land apart from the value of the buildings and fixtures thereon, and one-twentieth of one per cent of the value of the buildings and fixtures, such value to be determined as of the date of the application.

(3) Where the sum to be paid under subsection 2 does not ^{Where sum less than \$1.} amount to \$1 the amount payable shall be \$1.

(4) Subject to the rules, money payable under subsections 2 and 3 shall be paid into court, with the privity of the ^{To be paid into court and invested.} Accountant of the Supreme Court, and shall be placed to the credit of an account to be entitled "Assurance Fund under The Land Titles Act", and, subject to subsection 5, shall be invested from time to time under the direction of the court, and the interest or income derived therefrom shall be credited to the same account.

To be paid to
Treasurer
of Ontario.

(5) All money paid under this section and in court at the credit of the Assurance Fund and all money hereafter payable under this section shall, on his demand, be paid to the Treasurer of Ontario.

How money
to be
transmitted.

(6) Where the amount to be paid into the Assurance Fund is not more than \$10 no fee shall be payable for a direction to the bank to receive the same, and where such amount is payable in respect of a proceeding before a local master of titles the person desiring to pay the same may, at his own risk, transmit the amount by a money order payable to "The Accountant of the Supreme Court at Toronto", in a registered letter addressed to the accountant, together with a requisition in the prescribed form.

Valuation of
the land by
applicant.

(7) Subject to the rules, the value of the land shall be ascertained by the oath of the applicant unless the proper master of titles dispenses therewith.

Master may
obtain
valuation.

(8) Subject to the rules, if the oath of the applicant is dispensed with, or if the master is not satisfied as to the correctness of the value stated by the oath of the applicant or of any other person, he may require the affidavit or certificate in that behalf of a sworn valuator, and such affidavit or certificate shall be conclusive.

Expenses of
valuation.

(9) The expense of obtaining such valuation or certificate as allowed by the master shall be paid to the master by the registered owner before any dealing with the land is registered.

Indemnity
against loss.

(10) The master may require any applicant for registration to indemnify the Assurance Fund against loss by a bond or covenant to His Majesty, either with or without sureties, or by such other security as he considers expedient.

Election to
have fees for
Assurance
Fund made
charge.

(11) It shall not be necessary that the assurance fees payable on first registration be then paid, but if not then paid the same shall be a charge on the land, and the amount with interest at five per cent compounded annually shall be stated in the entry of ownership to be a charge on the land, and no subsequent transfer or charge of the land or any transmission thereof, or of any part thereof, shall be registered, except as is in this section provided, until the amount of such charge has been paid into the Assurance Fund and proper proof of such payment furnished to the master, but this subsection shall not apply to cases coming within subsection 12.

In
provisional
judicial
districts.

(12) In the case of land situate in any of the provisional judicial districts where the letters patent or a certified copy of the Order in Council granting the land has been forwarded

to the local master of titles for the purpose of registration, and the amount payable into the Assurance Fund is not paid, a note shall be made on the register and on the certificate that the land is liable to pay the assurance fee, and no subsequent transfer or charge of the land or transmission thereof shall be registered until such assurance fee, namely, a sum equal to one-fourth of one per cent of the value at the time of payment of the land apart from the buildings or fixtures and one-tenth of one per cent of the value of the buildings and fixtures erected on or affixed thereto before the first registration thereof, but not in any case less than \$1 in respect of any parcel, is paid.

(13) Where land is sold for taxes, or upon the winding up of a company, or under execution, or under the order of a court, the master may register the new immediate ownership subject to such charge, and where part of a parcel is so sold or is expropriated by any authority other than the Crown he may, upon proof of payment of the proportion of such Assurance Fund charge which he deems to be fairly attributable to the part so sold or expropriated, note in the register the fact of such payment in respect of the land so sold or expropriated and enter that part as free of the charge.

Where land sold in certain circumstances.

(14) Where land exceeding 400 acres is entered in one parcel the master, upon a transfer of part of such parcel, may, in like manner, allow payment of a proportionate part of the assurance fees and enter the part transferred free of the charge.

Where land exceeds 400 acres, and part transferred.

(15) Where the value of any land is diminished by the removal therefrom of timber or minerals after such land has been located, sold or patented, except where the removal of the timber was under a Crown timber licence, there shall also be paid as part of such assurance fee, one-fourth of one per cent of the value of the timber or minerals which have been removed, and if the Attorney-General is of the opinion that it is, in any case, in the public interest that the removal of any timber or minerals from any parcel of land should be prohibited until the assurance fees chargeable in respect thereof have been paid, he may, by notice in writing given to the registered owner, prohibit such removal, and may require the payment forthwith of the assurance fees chargeable in respect thereof, and thereafter no person shall remove any timber or minerals from the said land until such payment has been made and noted in the register, and upon such notice being given, the Attorney-General may recover from the registered owner, or from any person who has removed timber or minerals from the said land, the amount payable to the Assurance Fund in respect of the land, including the timber and minerals, and any person from whom the said

Payment of assurance fee on value of timber, minerals, etc., taken from land.

amount, or any part thereof has been collected, may recover the same from the registered owner, unless there is an agreement with the registered owner to the contrary.

Payment of
assurance
fees where
land taken
by Crown
is re-granted.

(16) Where land is forfeited to or is expropriated by the Crown without the assurance fees chargeable in respect of such land having been paid, and the said land is subsequently granted by the Crown, the like assurance fees shall be payable thereon as if such land were then being patented for the first time, and subsection 12 shall apply to the said land. R.S.O. 1937, c. 174, s. 127.

Remedy of
person
wrongfully
deprived of
land.

128.—(1) Any person wrongfully deprived of land, or of some estate or interest therein, by reason of the land being brought under this Act, or by reason of some other person being registered as owner through fraud or by reason of any misdescription, omission or other error in any certificate of ownership or charge, or in any entry on the register, shall be entitled to recover what is just, by way of compensation or damages, from the person on whose application the erroneous registration was made, or who acquired the title through the fraud or error.

Purchaser or
mortgagee in
good faith
for value
not liable.

(2) Subsection 1 shall not render liable any purchaser or mortgagee in good faith for valuable consideration by reason of the vendor or mortgagor having been registered as owner through fraud or error, or having derived title from or through a person registered as owner through fraud or error, whether the fraud or error consists in a wrong description of the property or otherwise.

Liability of
Assurance
Fund to
compensate
person
wrongfully
deprived.

(3) If the person so wrongfully deprived is unable by such means or otherwise to recover just compensation for his loss he shall be entitled to have the same paid out of the Assurance Fund, so far as the fund may be sufficient for that purpose having reference to other charges thereon, if the application is made within six years from the time of having been so deprived; or, in the case of a person under the disability of infancy, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased.

How com-
pensation
to be
determined.

(4) The liability of the fund for compensation and the amount of compensation shall, subject to appeal to a judge of the High Court and from him to the Court of Appeal be determined by the Inspector, unless the court or the Inspector on application directs some other way of ascertaining and determining the same.

Costs of
proceedings.

(5) The costs of the proceedings shall be in the discretion of the court or of the Inspector,

(6) Any sum paid out of the Assurance Fund may afterwards, for the benefit of the fund, be recovered by action in the name of the Inspector from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error or from his estate, and the Inspector's certificate of the payment out of the Assurance Fund shall be sufficient proof of the debt, but where the erroneous registration was made or the title acquired by mere error and without fraud, credit shall be given for any sum which such person may have paid into the Assurance Fund in respect of such land.

How Assurance Fund to be recouped.

(7) Where a registered disposition would, if unregistered, be absolutely void, or where the effect of the error would be to deprive a person of land of which he is in possession, or in receipt of the rents and profits, the Inspector may, in the first instance or after a reference to the court, direct the rectification of the register, and in case of such rectification the person suffering by the rectification shall be entitled to the compensation provided for by this section. R.S.O. 1937, c. 174, s. 128.

Rectification of register.
Imp. 60-61 V.
c. 65,
s. 7 (2).

129.—(1) Where any person makes a claim upon the Assurance Fund for compensation in respect of land patented as mining land or in respect of any land the chief value of which consists in the ores, mines or minerals therein, and it appears that such person is entitled to recover in respect of such land or of some interest therein, in determining the amount of compensation to be paid to such person the entire value of the land shall not be taken at a greater sum than eight hundred times the amount of the fees paid into the Assurance Fund in respect of the land, either in the first instance or under section 130.

Valuation of mining lands where compensation claimed out of Assurance Fund.

(2) Where such fees or some part thereof were paid into the fund in respect of other land in addition to that for which a claim is so made without it appearing what amount was paid in respect of the particular parcel of land with reference to which the claim is made, the fees so paid, or the portion thereof as to which the fact may not appear to be otherwise, shall be deemed to have been paid *pro rata* in accordance with the acreage or other superficial contents of the whole parcel or of the various parcels in respect of which the fees were paid. R.S.O. 1937, c. 174, s. 129.

Apportionment
into fund
pro rata.

130.—(1) Where any person taking a transfer or charge of any land, coming within the provisions of section 129, is of the opinion that a value to be determined under such section would not furnish a fair basis for compensation in

Additional payments into fund by transferee, etc.

case of loss he may, with the privity of the proper master of titles, pay into court to the credit of the Assurance Fund such further sum as shall, with the amount previously paid into the Assurance Fund in respect of such land, make up one-fourth of one per cent of the value of the land at the time of making the payment, such value to be determined in the manner provided by section 127.

No additional payment without special leave.

(2) No such additional payment shall be made, except by special leave of the master, unless the same is made within three months after the registration of the transfer or charge under which such person claims.

Valuation not affected where error committed before payment made.

(3) No such payment shall affect the valuation of the land where the error which gives the right to compensation was committed before such payment was made.

Entry to be made of additional payment.

(4) Where any additional payment is made under this section the master shall enter a memorandum of the particulars thereof in the margin of the entry of ownership, and shall in such entry show the total amount which has been paid into the fund in respect of such land. R.S.O. 1937, c. 174, s. 130.

No compensation.

131.—(1) No person shall be entitled to recover out of the Assurance Fund any compensation where,

when person first registered could have conveyed good title to purchaser for value without notice;

(a) the claim is founded upon a right existing at the time of the first registration of the land and the state of the title of the land at that time was such that the person who was first registered, or the person on whose nomination or authorization such registration was made, by a duly registered conveyance could have conferred, as against the claimant, a valid title to a purchaser in good faith for valuable consideration without notice of any defect in the title, and no sufficient caution had been registered and was in force when the application for first registration was made or a patent was forwarded for registration and the proper master of titles had not actual notice of the defect prior to the first registration;

New Zealand Act, No. 57, 1885, s. 53.

where claimant had notice of registration proceedings;

(b) the claimant, by direction of the master or in accordance with the practice of the office, had been served with a notice of the proceedings being had in the office, whether such proceedings were prior or subsequent to first registration, and failed to appear in accordance with the requirements of the notice; or if the master had adjudicated against him and he had failed to prosecute successfully an appeal against the master's decision;

- (c) the claimant has caused or substantially contributed to the loss by his act, neglect or default, and the omission to register a sufficient caution, notice, inhibition or restriction to protect a mortgage by deposit or other equitable interest or any unregistered right, or other equitable interest or any unregistered interest or equity created under section 70 or otherwise shall be deemed neglect within the meaning of this clause.
- where claimant's negligence has caused loss.
Imp. 60-61 V. c. 65, s. 7, subs. 3.

- (2) In this section, "claimant" includes the person actually making the claim and any person through whom he claims who he alleges was wrongfully deprived of land or of some estate or interest therein. R.S.O. 1937, c. 174, s. 131.
- Interpretation.

132.—(1) The Treasurer of Ontario, on receipt of the money paid to him under subsection 5 of section 127, shall issue to the Accountant of the Supreme Court in trust Ontario Government stock to an amount equal to the sum so received, and such stock shall represent the Assurance Fund and be available for the same purposes.

Treasurer to issue stock for sums received from fund.

- (2) The stock shall be payable or redeemable at such time and shall be subject to such conditions as to inscription, registration and transfer as the Lieutenant-Governor in Council may deem advisable, and shall bear interest at the rate of two and one-half per cent per annum.
- Conditions of issue.

- (3) The stock, together with the interest thereon, shall be charged upon and paid out of the Consolidated Revenue Fund.
- Charge on Consolidated Revenue Fund.

- (4) All sums which become payable out of the Assurance Fund shall to the extent, but not exceeding the amount, of such fund be paid by the Treasurer of Ontario to the persons entitled thereto, out of the Consolidated Revenue Fund, on the production of an order of the court or a judge authorizing or directing the payment to be made or of a certified copy thereof, and the sums so paid out shall be credited as payments on account of the stock in the hands of the accountant, and the amount thereof shall be reduced accordingly. R.S.O. 1937, c. 174, s. 132.
- Payment to persons entitled.

WITHDRAWING LAND FROM THE REGISTRY

- 133.**—(1) Where, after land has been registered, special circumstances appear or subsequently arise which make it inexpedient that the land should continue under this Act, the owner may apply in the prescribed manner to the proper master of titles for the withdrawal of the land from the Act.
- Application to withdraw registered land.

Certificate
by master.

(2) If the owner proves before the master that all persons interested in the land proposed to be withdrawn consent to its withdrawal and satisfies the master that special circumstances exist which render the withdrawal of such land or a part thereof expedient, the master may issue his certificate describing the land or such part thereof as the consent covers and as the master deems proper in such a manner that the certificate can be properly registered in the registry office for the registry division in which the land is situate, and upon the certificate being issued this Act shall cease to apply to the land described therein, and the land shall thereafter be subject to the ordinary laws relating to real estate and to the registry laws.

Certificate
to be
counter-
signed by
Inspector.

(3) The certificate of a local master under this section shall not be valid unless approved and countersigned by the Inspector.

Registration
of certificate.

(4) Upon the production of the certificate to the registrar of deeds and payment of a fee of \$1 the certificate shall be duly registered.

Application
of section.

(5) This section shall not apply to land registered under section 160. R.S.O. 1937, c. 174, s. 133.

ADMINISTRATION AND MISCELLANEOUS OFFICE OF LAND REGISTRY

Seal of office.
Imp. 38 & 39
V. c. 87,
s. 107.

134. There shall be a seal for every office of land titles. R.S.O. 1937, c. 174, s. 134.

Forms.

Imp. 38 & 39
V. c. 103.

135. The Inspector shall prepare and cause to be printed and promulgated such forms and directions as he may deem requisite or expedient for facilitating proceedings under this Act. R.S.O. 1937, c. 174, s. 135.

Administra-
tion of oaths.

Rev. Stat.,
c. 336.

136. The proper master of titles, or any officer of the office of land titles authorized by him in writing, or any person authorized for a like purpose under *The Registry Act*, may administer an oath for any of the purposes of this Act. R.S.O. 1937, c. 174, s. 136.

Depositions
taken before
special
examiners
may be
used before
master of
titles.

137.—(1) The proper master of titles in any application made to him may act upon depositions or examinations taken before any of the special examiners appointed by the court, who may administer the requisite oath to any person whose deposition or cross-examination the master has requested such examiner to take, and any such deposition or examination may be taken in shorthand, and any *viva voce* evidence given

before the master may be taken down by a sworn shorthand writer if the examining party so desires.

(2) The master may name the witnesses to be examined or he may request the examiner to take the examination of all witnesses produced by any named person or persons or of any class of witnesses. R.S.O. 1937, c. 174, s. 137.

Master to give directions to examiner.

138.—(1) The proper master of titles, by summons under the seal of his office, may require the attendance of all such persons as he may think fit in any application made to him, and may in the summons require any person to produce for inspection any document, deed, instrument or evidence of title to the production of which the applicant or any trustee for him is entitled.

Power of master to summon witnesses.

Imp. 38 & 39 V. c. 109.

(2) He may also, by a like summons, require any person having the custody of any map, plan or book made or kept in pursuance of any statute to produce such map, plan or book for his inspection.

To require production of plans, books, etc.

(3) He may examine upon oath any person appearing before him, and he may allow to every person summoned by him reasonable charges for his attendance.

Examination on oath.

(4) Any charges allowed by the master under this section shall be deemed to be charges incurred in or about proceedings for registration of land and may be dealt with accordingly.

Charges for attendance, etc.

(5) If any person disobeys any order of the master made under this section the master may certify such disobedience to the court, and thereupon such person may be punished by the court in the same manner as if the order were the order of the court.

Disobedience of orders of master.

(6) If any person, after the delivery to him of the summons or of a copy thereof, wilfully neglects or refuses to attend in pursuance of the summons or to produce such map, deed, instrument, evidence of title, plan, book or other document or to answer upon oath or otherwise such questions as may be lawfully put to him by the master he shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$50.

Non-attendance or refusal to answer questions.

Imp. 38 & 39 V. c. 87, s. 110.

(7) No person shall be required to attend in obedience to any summons, or to produce documents unless the fees and allowances for his attendance in accordance with the tariff of the court are paid or tendered to him. R.S.O. 1937, c. 174, s. 138.

Tender of conduct money and fees.

Certificates
as to taxes.

Rev. Stat.,
c. 24.

139. The treasurer of the proper municipality, upon payment of the fee prescribed by section 138 of *The Assessment Act*, shall furnish to any person requiring the same in respect of land registered or with reference to which an application for registration is pending, a certificate of payment of taxes, charges, rates and assessments, in the prescribed form, or in a form as nearly corresponding thereto as the information given by his books of office will allow, and the certificate shall be binding upon the municipality. R.S.O. 1937, c. 174, s. 139.

Appointment
of deputy
of master.

140.—(1) In case of the illness or absence of the master of titles or of a local master, or for any other cause, the Lieutenant-Governor in Council may appoint a person to act as the deputy *pro tempore* of the master or local master, and such deputy, while so acting, shall have all the powers of the master or local master for whom he is appointed deputy.

To act
from time
to time.

(2) A person may be appointed under this section who shall have power to act from time to time.

Until
authority
revoked, or
appointment
to office
made.

(3) In case of the death of a master the deputy may act until his authority is revoked or a master is appointed and assumes the duties of his office. R.S.O. 1937, c. 174, s. 140.

RIGHT TO INSPECT REGISTRY

Right to
inspect
documents.

Imp. 38 & 39
V. c. 87,
s. 104.

141. Subject to such regulations and exceptions and to the payment of such sums as may be fixed by general rules, any person registered as owner of any land or charge and any person authorized by any such owner, or by an order of the court, or by general rule, but no other person, may inspect and make copies of and extracts from any document in the custody of the proper master of titles relating to the land or charge. R.S.O. 1937, c. 174, s. 141.

RULES

Power to
make general
rules.

Rev. Stat.,
c. 190.

Imp. 38 & 39
V. c. 87,
s. 111.

142.—(1) The Lieutenant-Governor in Council, or subject to the approval of the Lieutenant-Governor in Council, the Rules Committee, under the authority of section 109 of *The Judicature Act*, which is to be read as applying to this Act, may make general rules in respect of,

- (a) the mode in which the register is to be made and kept;
- (b) the forms to be observed, the precautions to be taken, the instruments to be used, the notices to be given, and the evidence to be adduced in all proceedings or in connection with the registration, and in particular with respect to the reference to counsel of any

title to land proposed to be registered with an absolute title;

- (c) the custody of any instruments coming into an office of land titles, with power to direct the destruction of any of them where they have become altogether superseded by entries on the register or have ceased to have any effect;
- (d) the duties which are to be performed by the master of titles, the local masters and other officers employed, and what acts of the master may be done by other officers;
- (e) the costs to be charged by solicitors in or incidental to or consequential on the registration of land, or any other matter required to be done for the purpose of carrying this Act into execution, with power to require such costs to be payable by commission, percentage or otherwise, and to bear a certain proportion to the value of the land registered, or to be determined on such other principle as may be thought expedient;
- (f) the taxation of such costs and the persons by whom such costs are to be paid;
- (g) any matter by this Act directed or authorized to be prescribed;
- (h) any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be deemed expedient to make rules for the purpose of carrying this Act into execution. R.S.O. 1937, c. 174, s. 142 (1); 1941, c. 55, s. 17.

(2) Rules may be made in like manner with respect to the amount of fees payable under this Act, and regard may be had, Rules re-
specting fees.
Imp. 38 & 39
V. c. 87,
s. 112.

- (a) in the case of the registration of land or of any transfer of land on the occasion of a sale, to the value of the land as determined by the amount of purchase money, or to the value of it to be ascertained in such manner as may be prescribed;
- (b) in the case of registration of a charge or of any transfer of a charge, to the amount of such charge. R.S.O. 1937, c. 174, s. 142 (2).

143.—(1) Subject to the rules, the fees payable in respect of such business as is analogous to the business under *The Registry Act* shall be the same as the fees payable to the Fees.
Rev. Stat.,
c. 336.

registrar under that Act, and all other fees and costs, whether in respect of business done by the master of titles, local master of titles or by other officers, or by solicitors under this Act, shall be the same as nearly as may be as are payable in like proceedings in the court.

Stamps to be affixed to registered transfer or charge.

(2) The stamps for all fees payable on a certificate of ownership or a certificate of charge shall be affixed to the registered transfer or charge and not to the certificate, and all stamps payable in respect of registration shall be affixed to the instruments registered and not to the entry on the register. R.S.O. 1937, c. 174, s. 143.

APPEALS

Appeals from master.

144. Except as provided by section 113 an appeal shall lie from any act, order or decision of the master of titles or a local master of titles under this Act to a judge of the High Court and from him to the Court of Appeal. R.S.O. 1937, c. 174, s. 144.

Appeal.

Imp. 38 & 39 V. c. 87, s. 117.

145. Any person affected by an order made under this Act by a judge of the High Court may appeal from him to the Court of Appeal within the prescribed time, and subject to the rules in like manner as in the case of other appeals to that court. R.S.O. 1937, c. 174, s. 145.

ERRORS IN PROCEEDINGS

Proceedings not void for want of form.

146. No application, order, affidavit, certificate, registration or other proceedings shall be invalid by reason of any mistake not affecting the substantial justice of the proceeding. R.S.O. 1937, c. 174, s. 146.

OATH OF OFFICE AND SECURITY BY OFFICERS

Oath of office to be taken by master of titles.

147.—(1) The master of titles, before he enters upon the duties of his office, shall take and subscribe before a judge of the court the oath of office in the following form:

I, *A.B.*, do solemnly swear that I will faithfully, and to the best of my ability, perform the duties of the office of master of titles.

By local master or deputy.

(2) Every local master of titles and every deputy of the master of titles or of a local master, before he enters upon the duties of his office, shall take and subscribe an oath of office similar to that required to be taken by the master of titles.

(3) In the case of a local master or of a deputy of a local master, the oath may be taken before a judge of the county or district court. Before whom to be taken.

(4) The oaths of office shall be transmitted to the Provincial Secretary. R.S.O. 1937, c. 174, s. 147. To be transmitted to Provincial Secretary.

148. Before the master of titles or a local master of titles enters upon the duties of his office he shall furnish security in accordance with *The Public Officers Act*. R.S.O. 1937, c. 174, s. 148. Bond of master. Rev. Stat., c. 311.

MASTERS OR OFFICERS NOT TO ACT AS AGENTS FOR INVESTORS

149.—(1) No master of titles, officer or clerk appointed under this Act shall, directly or indirectly, act as the agent of any corporation, society, company or person investing money and taking securities on land, or advise for any fee or reward, or otherwise, upon titles to land, or practise as a conveyancer or carry on or transact within the office any business or occupation other than his duties as such master, officer or clerk, or as holder of some other office under the Government of Ontario. Master, etc., not to act as agent, etc., of investors.

(2) This section shall apply to every local master, but as applied to him and the officers and clerks in his office, the word "land" shall mean land within the county, city, town or district for which he is local master. R.S.O. 1937, c. 174, s. 149. Application of section.

EXTENSION OF ACT TO OTHER LOCALITIES AND EXPENSES

150.—(1) The council of a county, or of a city or town separated from the county for municipal purposes, may pass a by-law declaring it expedient that the provisions of this Act be extended to the county, city or town. Adoption of Act by municipality.

(2) The corporations of the County of York and City of Toronto and of any county, city or town which has passed or passes a by-law under subsection 1 shall provide proper fire-proof and other accommodation for an office of land titles, and, so far as the expenses of the office are not covered by the fees collected thereat, the corporation shall pay the same, including the salary of the master of titles of the locality, and all necessary and proper books, stationery, furniture, and lighting, cleaning and heating of the office, and attendance, and other matters and things incident to the proper conduct of the business of the office. Accommodation to be supplied by municipality.

Where county includes city or separated town.

(3) Where this Act is extended to a county which includes a city or town separated from the county for municipal purposes, the city or town and county shall share the expenses to be borne by the locality under this Act, in such proportions as may be determined by arbitration under *The Municipal Act*, in case the councils interested do not agree in respect thereto.

Rev. Stat., c. 243.

Proclamation extending Act to municipality.

(4) Where such a by-law has been passed and proper accommodation has been provided either in connection with the registry office or at some other convenient place to the satisfaction of the Inspector, and approved by the Lieutenant-Governor in Council, the Lieutenant-Governor may, by his proclamation, extend the operation of this Act to such county, city or town from a day to be named in the proclamation.

Issue of proclamation to be evidence of performance of conditions precedent.

(5) The fact of the conditions precedent to the issue of such proclamation having been performed shall be conclusively established by the issue of the proclamation. R.S.O. 1937, c. 174, s. 150.

Extension of application of Act on petition of owners.

151.—(1) Where not less than 20 ratepayers of any county in which is situate a city or a town to which the provisions of this Act have been extended, who are owners of land situate in such county of the aggregate assessed value of \$400,000, petition the Lieutenant-Governor in Council for the issue of a proclamation extending the provisions of this Act to the county, and the Lieutenant-Governor in Council declares that it is expedient that the same should be so extended, the provisions of section 150 shall apply to such county as fully as they would have been applicable had a by-law been passed by the council of the county.

Master's compensation.

(2) In the cases provided for by subsection 1 the local master shall not be entitled to be paid a salary, unless the county council passes a resolution for the payment to him of a salary to be provided by the county, but such local master shall be entitled to retain for his own use the fees collected upon proceedings in his office.

Expenses of introduction of system, by whom to be paid.

(3) All costs and expenses incurred in introducing the land titles system into the county, or incurred during one year thereafter in connection therewith, shall be paid by the petitioners.

Non-resident owners to be deemed ratepayers.

(4) The owners of land which is assessed as land of non-residents shall be deemed ratepayers within the meaning of this section. R.S.O. 1937, c. 174, s. 151.

152.—(1) Where this Act applies to a county, city or town entitled to receive money under section 107 of *The Registry Act* the registrar shall pay to the Treasurer of Ontario, to be applied, so far as necessary, in defraying the salary of the master and other expenses of the office, the money payable either directly or indirectly to the county, city or town under that Act, and the Treasurer shall pay the balance to the county, city or town, and if the amount so paid to the Treasurer is not sufficient the residue, or if nothing is payable by the registrar, the whole of such salary and expenses shall be made good to the Province of Ontario by the corporation of the county, city or town.

Surplus fees under Rev. Stat., c. 336, to be applied in defraying expenses of land titles office.

(2) Where, however, the fees collected in any such land titles office exceed the expenses thereof, the Treasurer of Ontario shall pay over to the corporation or corporations, who would have been liable to make up a deficit, the amount of such excess. R.S.O. 1937, c. 174, s. 152.

Surplus after payment of expenses of office to be paid to municipality.

LOCAL MASTERS OF TITLES

153.—(1) Where at the time of the issue of a proclamation under section 150 there is a referee of titles, under *The Quieting Titles Act*, residing in the locality such referee shall *ex officio* be the first local master of titles therefor, unless he practises as a barrister or solicitor, or is a judge of the county court, and he shall hold the office during the pleasure of the Lieutenant-Governor in Council.

Local masters of titles *ex officio*. Rev. Stat., c. 326.

(2) Subject to subsection 1 the Lieutenant-Governor in Council may appoint a master of titles for any locality in which this Act is in force to be styled "The Local Master of Titles" for the county, city, town or district, as the case may be, who shall hold office during pleasure.

Appointment of local masters.

(3) The person appointed may, in the discretion of the Lieutenant-Governor in Council, be a judge of a county or district court, a barrister or solicitor, whether practising or not, or a registrar, or a deputy local master of titles having five years practice in a land titles office.

Qualifications.

(4) The local master of titles shall be paid by salary or fees for his services in that capacity, such salary to be fixed by the Lieutenant-Governor in Council from time to time, with reference to the amount or probable amount of the business, on the report of the Inspector and shall be paid for his services in entering patents under sections 160 to 163 such sum as the Lieutenant-Governor in Council shall direct.

Salary to be fixed by the Lieutenant-Governor in Council.

Order to be
laid before
Assembly.
Rev. Stat.,
c. 190.

(5) The Order in Council shall be laid before the Assembly as provided in respect of Orders in Council under section 100 of *The Judicature Act*.

Commuta-
tion of fees of
registrar or
local master
of titles.

(6) The Lieutenant-Governor in Council may commute the fees payable to a registrar of deeds or local master of titles in any county or district whether both offices are held by one officer or otherwise for a fixed sum each year, provided that such sum shall not exceed the income which such registrar or local master would have derived from fees during such year, and the fees so commuted shall, on or before the 15th day of January in each year, be paid over to the Treasurer of Ontario in the case of a district for the use of the Province, and in the case of a county or city shall be subject to such division between such county or city and the Province as the Lieutenant-Governor in Council may direct.

Apportion-
ment of com-
mutation.

(7) Where such registrar or local master holds office for part of a year he or his executors or administrators shall be entitled to the just proportion of such commuted fixed sum. R.S.O. 1937, c. 174, s. 153.

DUTIES AND POWERS OF LOCAL MASTERS

Local
master's
authority
and duties.

154. Except where otherwise provided by this Act every local master of titles, in respect to land situate within the territory for which he is appointed, shall have all the authority of and perform all the duties which, in the County of York, are performed by the master of titles, subject to appeal in the same manner. R.S.O. 1937, c. 174, s. 154.

FIRST REGISTRATION

Local master
to transmit
application
to master at
Toronto.

155.—(1) If, upon an application for first registration, the local master of titles finds that the applicant or his nominee is entitled to be registered he shall sign a memorandum to that effect at the foot of the application and draft entry and shall transmit the same to the master of titles at Toronto, with the deeds, evidence and other papers before him, and a draft of the entry of ownership proposed to be made.

Where
master at
Toronto
concurs.

(2) If the master of titles at Toronto concurs in the opinion of the local master he shall approve thereof and shall return the papers transmitted to him, and the local master may thereupon register the applicant or his nominee as owner.

Where
master at
Toronto does
not concur.

(3) If the master of titles at Toronto does not concur in the opinion of the local master he shall communicate his opinion to the local master and shall cause such action to be taken as he deems expedient, and if his objections are not removed by explanations or additional evidence the applicant

or his nominee shall not be registered unless the court on appeal, or on a case stated for its opinion, otherwise directs.

(4) If there is a contest upon the decision of the master of titles at Toronto concurring in the local master's opinion registration shall be delayed for 10 days to enable anyone who so desires to appeal. Stay of proceedings in case appeal desired. R.S.O. 1937, c. 174, s. 155.

156. Except as provided in subsection 4 of section 160, section 155 shall not apply to applications coming within sections 160, 161 and 163, or to applications for a possessory title, or for the registration of leasehold land where the freehold or other estate out of which the lease is derived is registered land, or where a declaration of the title of the lessor to grant the lease is not required. Exception to application of s. 155. R.S.O. 1937, c. 174, s. 156.

157.—(1) Where upon an application for first registration the master of titles or Inspector requires to examine any instruments registered in a registry office situate outside of the City of Toronto, the master or Inspector may request the registrar of the registry division in which the land lies to transmit any instrument appearing on the abstract or required in connection with the application which the master or Inspector desires to examine. Request of master or Inspector for documents.

(2) The registrar upon payment of his proper fees shall comply with the request and shall transmit the documents by registered post or by express and shall send therewith a list of the documents transmitted and shall retain a copy of the list. Duty of registrar.

(3) The master or Inspector shall return the documents as soon as practicable by registered post or by express, sending therewith to the registrar a list of all the documents so returned and keeping a copy of the list. Documents to be returned.

(4) The registrar, in addition to his usual fees for the production of a document, shall be entitled to an additional fee of 10 cents for each document transmitted as compensation for his trouble in respect of such transmission, the preparation of the list and returning the documents to their proper files. Additional fees to registrar. R.S.O. 1937, c. 174, s. 157.

SUBSEQUENT REGISTRATION

158. If, on the application for the registration of an instrument after a first registration or for the registration of a transmission, the local master of titles is unable to come to a clear conclusion as to the action which he should take he shall delay making the required entry until he has stated the Submission of case to master of titles at Toronto where local master in doubt.

facts to the master of titles at Toronto for his opinion, and in submitting the case the local master shall state his own view and his reasons therefor. R.S.O. 1937, c. 174, s. 158.

INSPECTOR

Duties of
Inspector.
Rev. Stat.,
c. 336.

159. The Inspector shall, subject to the rules, have the like powers and duties as under *The Registry Act*, and such other duties as may be required of him by this Act, or by the rules, or as he may be required by the Lieutenant-Governor in Council to perform. R.S.O. 1937, c. 174, s. 159.

REGISTRATION OF NEWLY PATENTED LANDS IN DISTRICTS

Letters
patent or
Order in
Council
granting
lands in
districts,
registration
of.

160.—(1) Where any land situate in a provisional judicial district is granted by letters patent or by order of the Lieutenant-Governor in Council the letters patent or a certified copy of the Order in Council shall be forwarded to the local master of titles of the district for the purpose of the grantee being entered as the first registered owner of the land, with any necessary qualifications.

Exemption
of certain
lands from
application of
subsection 1.

(2) Subsection 1 shall not apply to land covered with the waters of Lake Huron adjacent to the Great Manitoulin Island, Cockburn Island or Fitzwilliam Island, in the District of Manitoulin, or adjacent to any island which, in whole or in part, lies between headland and headland around such three islands.

Where notice
of caution or
adverse claim
unnecessary.

(3) It shall not be necessary to issue a notice in respect of a caution or adverse claim which has been lodged if, by the certificate of the Minister or Deputy Minister of Lands and Forests, it appears that the claim in respect of which such caution or adverse claim was lodged was considered by the Minister and disposed of before the issue of the patent, and if before the receipt of such a certificate any proceedings have been taken by a local master in respect of such caution or adverse claim he shall thereupon discontinue the same and disallow any objection or claim founded thereon and make such order as to costs as he deems just.

Action by
local master.

(4) Where there is no contest as to the rights of the parties the local master may make the requisite entry and issue his certificate; but in case of a contest he shall transmit the papers to the master of titles at Toronto before registering the patentee as owner, and shall otherwise proceed as provided in section 155.

Where
cautioner
consents.

(5) Where the cautioner consents to the registration of the patentee the local master need not issue any notice on account of such caution.

(6) Letters patent from the Crown demising land or mining rights for a term of years, or for any greater estate, granted on or after the 31st day of December, 1887, shall be deemed to have been and to be within the provisions of this section. Patents demising lands for term of years declared within this section.
 R.S.O. 1937, c. 174, s. 160.

161. Where land situate in a provisional judicial district has been patented by the Government of Canada the local master of titles shall have authority to register the patentee as owner of such land and may do so without submitting his finding upon the application to the master of titles at Toronto for his concurrence. Registration of Dominion patentees.
 R.S.O. 1937, c. 174, s. 161.

162.—(1) Upon an entry of ownership being made the local master of titles, unless the land is free grant or otherwise exempt from execution, shall, in the prescribed form, notify the sheriff in whose bailiwick the land lies of the entry of the patentee as owner. Notice by master to sheriff.

(2) The notice shall be sent by registered post, and no entry of any dealing with the land shall be made in the register until 14 days after the mailing of the notice, unless proof is previously made that the land is not liable to any execution. After what time entries may be made in register.

(3) The sheriff, upon receipt of the notice, shall forthwith transmit to the local master a copy of any execution in his hands affecting the land of the patentee, and if within the 14 days no copy of an execution against the land of the patentee is received from the sheriff, the local master may assume that the land is not subject to any execution and may enter subsequent dealings with the land accordingly, and as against such entry no claim shall afterwards be sustained in respect of an execution against the patentee. Action of sheriff and local master after notice.

(4) Where the local master receives from the sheriff a copy of an execution affecting the land an entry thereof shall be made against the land and all dealings with it shall be subject to such execution. Entry where copy of execution received.
 R.S.O. 1937, c. 174, s. 162.

163.—(1) Where a patent for land is forwarded to a local master of titles, under section 160, and it is made to appear to him that the patentee since the date of the patent has transferred the land to some other person the transferee, or in case of a further transfer or transfers the ultimate transferee of the land, shall be entered as the first registered owner and shall be described as the transferee of the patentee or otherwise according to the fact. Registration of transferee of patentee.

Evidence of
no execution.

(2) Before entering a transferee as first registered owner the local master shall require evidence to be produced showing that there is no execution affecting the land. R.S.O. 1937, c. 174, s. 163.

Fees payable
to local
master.

164. Where notices or other proceedings are necessary the local master shall be entitled to charge in addition to his disbursements the like fees as are payable to the master of titles in respect of similar proceedings. R.S.O. 1937, c. 174, s. 164.

CHAPTER 198

The Land Transfer Tax Act

1.—(1) Notwithstanding anything to the contrary in *The Registry Act*, a tax of one-fifth of one per cent upon the amount of the purchase price shall be paid by the party registering same upon every transfer, conveyance, deed, instrument or writing whereby any land, tenements or other realty sold is granted, assigned, transferred or otherwise conveyed to or vested in the purchaser or purchasers, or in any other person or persons by his, her or their direction. R.S.O. 1937, c. 31, s. 1. Tax on transfers of land. Rev. Stat., c. 336.

(2) Where any such instrument or instruments may be registered or entered in more than one registry office or land titles office or in a registry and land titles office, the tax imposed hereby shall be payable once only in respect of any one transfer or conveyance, and shall be payable upon the delivery to the registrar or lodging in the land titles office the first instrument registered or lodged in such transaction. R.S.O. 1937, c. 31, s. 3. Tax to be payable on one registration.

(3) No tax shall be payable under this Act by the Crown or by any foreign state. 1949, c. 49, s. 1. Exception.

2. The tax shall be collected by the registrar or master of titles, as the case may be, before he registers the transfer, conveyance, deed or other instrument, and a registrar or master of titles not paid by salary shall be entitled to retain to his own use two per cent of the moneys collected by him under subsection 1 of section 1. R.S.O. 1937, c. 31, s. 2. Collection of tax by registrar or master of titles.

3. The registrar and master shall within the first week of each month send to the Treasurer of Ontario a statement of the amount collected during the previous month in respect of said tax and shall pay over the amount thereof, less the percentage provided for in section 2, to the Treasurer of Ontario for the uses of Ontario. R.S.O. 1937, c. 31, s. 4. Monthly returns by registrar and master.

4.—(1) There shall be filed with the registrar or master an affidavit setting out the true consideration for the sale or transfer and the full and true amount in cash and the value of any property or security included in the consideration, and the amount or value of any lien or encumbrance subject to which the sale or transfer was made. Affidavit.

By whom to
be made.

(2) The affidavit may be made by the purchaser or vendor or by any person acting for them under a power of attorney, or by an agent accredited in writing by the purchaser or vendor, or by the solicitor for either of them, or by some other person approved by the Treasurer of Ontario.

What to
contain.

(3) The affidavit shall state that the person making it has personal knowledge of the facts stated in the affidavit, and there shall be filed therewith the power of attorney or the accredited agent's authority referred to in subsection 2. R.S.O. 1937, c. 31, s. 5 (1-3).

Reference to
Controller
of Revenue.

(4) If the registrar or master is not satisfied that the affidavit sets out the true consideration for the sale or transfer, he may refuse to register the instrument to which the affidavit relates until the Controller of Revenue has signified over his signature that he is satisfied that the consideration stated in the affidavit is the true consideration. 1950, c. 35, s. 1.

When vendor
liable for tax.

(5) Where the affidavit is made by the vendor or any person acting as attorney, agent or solicitor for the vendor, the vendor shall be personally liable to the Treasurer of Ontario jointly and severally with the purchaser for the amount of the tax payable under this Act.

Right of
vendor to
recover.

(6) Where the vendor is compelled to pay the tax payable under this Act or any part thereof, he shall have the right to recover any amount of such payment from the purchaser in an action in any court of competent jurisdiction. R.S.O. 1937, c. 31, s. 5 (4, 5).

Regulations.

5. The Lieutenant-Governor in Council may make regulations prescribing the form of affidavit referred to in section 4, and generally for the better carrying out of the provisions of this Act. R.S.O. 1937, c. 31, s. 6.

Where
instrument
covers
lands in
two or
more
divisions.

Rev. Stat.,
cc. 197, 336.

6. Where the lands covered by the transfer, conveyance or deed are partly in one registry division and partly in another or parts of the land are registered under *The Land Titles Act* and parts are subject to *The Registry Act*, the registrar or master receiving the tax shall retain the percentage mentioned in section 2, and shall pay over to the registrar or master in whose office any conveyance or transfer is subsequently registered or entered, such proportion of the percentage as may be agreed upon between them, and in case of disagreement the amount to be paid shall be determined by the Inspector of Legal Offices. R.S.O. 1937, c. 31, s. 7.

7. Where the right of the registrar or master to require the payment of the tax or any portion thereof under this Act is disputed by the person registering or lodging the transfer or conveyance, the tax may be paid under protest and the registrar or master shall give a receipt in writing signed by him for the amount paid, and shall state that the same has been received, and shall thereupon refer the matter to the decision of the Treasurer of Ontario or such official as the Treasurer may appoint, who may order the refund of the tax or any portion thereof to the person who paid it. R.S.O. 1937, c. 31, s. 8.

8. Any person authorized for a like purpose under *The Land Titles Act* or under *The Registry Act* may administer an oath for any of the purposes of this Act. R.S.O. 1937, c. 31, s. 10.

CHAPTER 199

The Landlord and Tenant Act

INTERPRETATION

1. In this Act,Interpre-
tation.

- (a) "crops" means all sorts of grain, grass, hay, hops, fruits, pulse and other products of the soil;
- (b) "landlord" includes lessor, owner, the person giving or permitting the occupation of the premises in question, and his and their heirs and assigns and legal representatives, and in Parts II and III also includes the person entitled to the possession of the premises;
- (c) "standing crops" means crops standing or growing on the demised premises;
- (d) "tenant" includes lessee, occupant, sub-tenant, under-tenant, and his and their assigns and legal representatives. R.S.O. 1937, c. 219, s. 1.

PART I

RELATION OF LANDLORD AND TENANT

2. The relation of landlord and tenant shall not depend on tenure, and a reversion in the lessor shall not be necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor shall it be necessary in order to give a landlord the right of distress that there is an agreement for that purpose between the parties. R.S.O. 1937, c. 219, s. 2.

Relation of
landlord and
tenant.

COVENANTS RUNNING WITH REVERSION, ETC.

3. All persons being grantees or assignees of the King, or of any person other than the King, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantage against the lessees, their executors, administrators, and assigns, by entry for non-payment of the rent, or for doing of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit, and remedies, by action only, for the non-performance of other conditions, covenants, or agreements, contained and expressed in

Remedies
available to
assignees of
reversion.

the indentures of their said leases, demises or grants against all and every of the said lessees and grantees, their executors, administrators, and assigns as the said lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times. R.S.O. 1937, c. 219, s. 3.

Lessee's
covenant to
run with
reversion.

4. Rent reserved by a lease and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by any person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. R.S.O. 1937, c. 219, s. 4.

Grantee of
covenant to
may enforce
covenants,

5. The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease shall extend to and be enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable. R.S.O. 1937, c. 219, s. 5.

Action of
covenant,
etc., against
assigns of
grantors
and lessors.

6. All lessees and grantees of lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators, and assigns shall and may have like action, advantage, and remedy against all and every person who shall have any gift or grant of the King, or of any other persons, of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases as the same lessees or any of them, might and should have had against their said lessors, and grantors, their heirs, or successors. R.S.O. 1937, c. 219, s. 6.

Lessor's
covenants
to run with
reversion.

7. The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance

of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise, and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, such obligation may be taken advantage of and enforced against any person so entitled. R.S.O. 1937, c. 219, s. 7.

APPORTIONMENT OF CONDITION OF RE-ENTRY

8. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cessation in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease. R.S.O. 1937, c. 219, s. 8.

Apportionment of conditions on severance, etc.

SUB-LESSEE NOT TO HAVE RIGHT TO CALL FOR TITLE

9.—(1) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

On sub-demise title to leasehold reversion not to be required.

(2) This section applies only if and as far as the contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained. R.S.O. 1937, c. 219, s. 9.

Saving.

DEFECTS IN LEASES MADE UNDER POWERS OF LEASING

10. Where, in the intended exercise of any power of leasing, whether derived under a statute or under any instrument lawfully creating such power, a lease has been, or is hereafter granted which is, by reason of the non-observance or omission of some condition or restriction or by reason of any other deviation from the terms of such power, invalid as against the person entitled, after the determination of the interest of the person granting such lease, to the reversion, or against other the person who, subject to any lease lawfully granted

Effect of lease where there is a deviation from terms of the power to demise.

under such power, would have been entitled to the land comprised in such lease, such lease, in case the same was made in good faith and the lessee named therein, his heirs, executors, administrators, or assigns have entered thereunder, shall be considered a contract for a grant at the request of the lessee, his heirs, executors, administrators, or assigns of a valid lease under such power, to the like purport and effect as such invalid lease, save so far as any variation may be necessary in order to comply with the terms of such power, and all persons who would have been bound by a lease lawfully granted under such power shall be bound by such contract; but no lessee under any such invalid lease, his heirs, executors, administrators, or assigns, shall be entitled by virtue of any such contract to obtain any variation of such lease, where the persons who would have been bound by such contract are willing to confirm such lease without variation. R.S.O. 1937, c. 219, s. 10.

What may be deemed a confirmation of invalid lease.

11. Where, upon or before the acceptance of rent under any such invalid lease, any receipt, memorandum or note in writing confirming such lease is signed by the person accepting such rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease. R.S.O. 1937, c. 219, s. 11.

Duty of lessee to accept confirmation.

12. Where, during the continuance of the possession taken under any such invalid lease, the person for the time being entitled, subject to such possession, to the land comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation, the lessee, his heirs, executors, or administrators, or any person who would have been bound by the lease if the same had been valid, upon the request of the person so able to confirm the same, shall be bound to accept a confirmation accordingly, and such confirmation may be by memorandum or note in writing signed by the persons confirming and accepting, or by some other persons by them thereunto lawfully authorized, and, after confirmation and acceptance of confirmation, such lease shall be valid and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid. R.S.O. 1937, c. 219, s. 12.

Effect of invalid leases if grantor continues in ownership until he might lawfully grant the lease.

13. Where a lease granted in the intended exercise of any power of leasing is invalid by reason that, at the time of the granting thereof, the person granting the same could not lawfully grant such lease, but the estate of such person in the land comprised in such lease has continued after the time when such, or the like lease, might have been granted by him in the

lawful exercise of such power, such lease shall take effect and be as valid as if the same had been granted at such last mentioned time, and all the provisions of sections 10 to 15 shall apply to every such lease. R.S.O. 1937, c. 219, s. 13.

14. Where a valid power of leasing is vested in, or may be exercised by, a person granting a lease, and, by reason of the determination of the estate or interest of such person or otherwise, such lease cannot have effect and continuance according to the terms thereof independently of such power, such lease shall for the purposes of sections 10 to 13, be deemed to be granted in the intended exercise of such power although such power is not referred to in such lease. R.S.O. 1937, c. 219, s. 14.

What shall be deemed an intended exercise of a power.

15. Nothing in sections 10 to 14 shall extend to, prejudice or take away any right of action, or other right or remedy to which, but for sections 10 to 14, the lessee named in any such lease, his heirs, executors, administrators or assigns would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or prejudice or take away any right of re-entry or other right or remedy to which, but for such sections, the person granting such lease, his heirs, executors, administrators or assigns, or other person, for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled for or by reason of any breach of the covenants, conditions, or provisos contained in such lease, and on the part of the lessee, his heirs, executors, administrators or assigns to be observed and performed. R.S.O. 1937, c. 219, s. 15.

Saving the rights of the lessees under certain covenants and the lessor's right of re-entry.

MERGER, ETC., OF REVERSIONS

16. Where the reversion expectant on a lease of land merges or is surrendered, the estate which for the time being confers as against the tenant under the lease the next vested right to the land shall, to the extent of and for preserving such incidents to and obligations on the reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease. R.S.O. 1937, c. 219, s. 16.

Effect of surrender or merger of reversion expectant in certain cases.

RIGHT OF RE-ENTRY

17.—(1) In every demise, whether by parol or in writing and whenever made, unless it is otherwise agreed, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, remains unpaid for 15

Right of re-entry on nonpayment of rent.

days after any of the days on which the same ought to have been paid, although no formal demand thereof has been made, it shall be lawful for the landlord at any time thereafter, to re-enter into and upon the demised premises, or any part thereof in the name of the whole, and to have again, re-possess and enjoy the same as of his former estate.

Implied
agreement
for re-entry
on conviction
of tenant
for keeping
disorderly
house.
R.S.C.,
1927,
c. 36.

(2) In every such demise there shall be deemed to be included an agreement that if the tenant or any other person is convicted of keeping a disorderly house, within the meaning of the *Criminal Code* (Canada) on the demised premises, or any part thereof, it shall be lawful for the landlord at any time thereafter, to re-enter into the demised premises, or any part thereof, and to have again, re-possess and enjoy the same as of his former estate. R.S.O. 1937, c. 219, s. 17.

FORFEITURE OF LEASES

Interpre-
tation.

18.—(1) In this section and in sections 19 to 22,

- (a) "action" includes any proceedings under Part III;
- (b) "lease" includes an original or derivative under-lease and a grant at a fee farm rent or securing a rent by condition and an agreement for a lease where a lessee has become entitled to have his lease granted;
- (c) "lessee" includes an original or derivative under-lessee and the heirs, executors, administrators and assigns of a lessee and a grantee under such a grant and his heirs and assigns;
- (d) "lessor" includes an original derivative under-lessor and the heirs, executors, administrators and assigns of a lessor and a grantor under such a grant and his heirs and assigns;
- (e) "mining lease" means a lease for mining purposes, that is a searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith and includes a grant or licence for mining purposes;
- (f) "under-lease" includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

(g) "under-lessee" includes any person deriving title under or from an under-lessee.

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable by action, entry, or otherwise, unless the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach. R.S.O. 1937, c. 219, s. 18.

Restrictions
on and relief
against
forfeiture
of leases.

19.—(1) Where a lessor is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action or summary application to a judge of the Supreme Court brought by himself, apply to the court for relief, and the court may grant such relief as, having regard to the proceedings and conduct of the parties under the provisions of section 18 and to all the other circumstances, the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the court may deem just.

Relief
against
forfeiture.

(2) This section and section 18 shall apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of a statute.

Where right
of entry is
under a
statute.

(3) For the purposes of this section a lease limited to continue only as long as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

Lease until
breach.

(4) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the lessee, at any time before judgment, pays into court all the rent in arrear and the costs of the action the proceedings in the action shall be forever stayed.

When
proceedings
may be
stayed.

(5) Where relief is granted under this section the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

Position of
lessee.

Application
of section.

(6) This section shall apply to leases made either before or after the commencement of this Act and shall apply notwithstanding any stipulation to the contrary.

Exceptions.

(7) This section shall not extend,

Rev. Stat.,
c. 26.

(a) to a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the lessee making an assignment for the benefit of creditors under *The Assignments and Preferences Act*, or on the taking in execution of the lessee's interest; or

(b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

Condition
for relief
for non-
insurance.

(8) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms which the court may impose, upon the term that the insurance is effected. R.S.O. 1937, c. 219, s. 19.

LEASES, UNDER-LEASES, FORFEITURE

Protection
of under-
lessees on
forfeiture of
superior
lease.

20. Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the court, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action or summary application to a judge of the Supreme Court brought by such person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rents, costs, expenses, damages, compensation, giving security or otherwise as the court in the circumstances of each case thinks fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease. R.S.O. 1937, c. 219, s. 20.

21. Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it is known to the lessor that he claims such right or interest or if the instrument under which he claims is registered in the proper registry or land titles office, shall be made a party to the action. R.S.O. 1937, c. 219, s. 21.

Who must be parties to an action to enforce right of re-entry or forfeiture.

22.—(1) In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that such licence or consent is not to be unreasonably withheld.

Licence to assign not to be unreasonably withheld.

(2) Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the county or district court, upon the application of the tenant or of the assignee or sub-tenant, made by way of originating notice according to the practice of the court, may make an order determining whether or not the licence or consent is unreasonably withheld and, where the judge is of opinion that the licence or consent is unreasonably withheld, permitting the assignment or sub-lease to be made, and such order shall be the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease shall not be a breach thereof. R.S.O. 1937, c. 219, s. 22.

Application to court where consent to assignment or sub-letting withheld.

LICENCES

23. Where a licence to do any act which, without such licence, would create a forfeiture, or give a right to re-enter under a condition or power reserved in a lease, is given to a lessee or his assigns, every such licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but shall not prevent a proceeding for any subsequent breach unless otherwise specified in such licence, and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made punishable by such licence, in the same manner as if no such licence had been given, and the condition or right

Restriction of effect of licence under power contained in lease, etc.

of re-entry shall be and remain in all respects as if such licence had not been given, except in respect of the particular matter authorized to be done. R.S.O. 1937, c. 219, s. 23.

Restricted operation of partial licences.

24. Where in a lease there is a power or condition of re-entry on assigning or underletting or doing any other specified act without licence, and a licence has been or is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or has been or is given to a lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act in respect of part only of the property, such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such licence. R.S.O. 1937, c. 219, s. 24.

WAIVER OF COVENANT

Restriction of effect of waiver of covenant.

25. Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor or his heirs, executors, administrators or assigns, is proved to have taken place in any one particular instance, such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears. R.S.O. 1937, c. 219, s. 25.

COVENANT TO PAY TAXES

Covenant to pay taxes not to include taxes for local improvements.

26.—(1) Unless it is otherwise specifically provided in a lease made after the 1st day of September, 1897, a covenant by a lessee for payment of taxes shall not be deemed to include an obligation to pay taxes assessed for local improvements.

Effect of altering form of covenant.

Rev. Stat., c. 361.

(2) In the case of a lease made under *The Short Forms of Leases Act* where the words "except for local improvements" are struck out or omitted from the covenant number 3 in Schedule B of that Act, such striking out or omission shall be deemed to be a specific provision otherwise made within the meaning of subsection 1. R.S.O. 1937, c. 219, s. 26.

LENGTH OF NOTICES TO QUIT

27. A week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, shall be sufficient notice to determine, respectively, a weekly or monthly tenancy. R.S.O. 1937, c. 219, s. 27.

Notice to quit in case of weekly or monthly tenancies.

TENANTS TO NOTIFY LANDLORDS

28. Every tenant to whom a writ in an action for the recovery of land has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his landlord's bailiff or receiver, and if he omits so to do he shall be answerable to his landlord for all damages sustained by him by reason of the failure to give such notice. R.S.O. 1937, c. 219, s. 28.

Penalty on tenant receiving writ for recovery of land and not notifying his landlord.

EXEMPTIONS FROM DISTRESS

29.—(1) The goods and chattels exempt from seizure under execution shall not be liable to seizure by distress by a landlord for rent, except as hereinafter provided.

Exemption of goods.

(2) In the case of a monthly tenancy the exemption shall only apply to two months' arrears of rent.

Monthly tenancies.

(3) The person claiming the exemption shall select and point out the goods and chattels which he claims to be exempt. R.S.O. 1937, c. 219, s. 29.

Selection of exempted goods.

30.—(1) In this section, subject to section 31, "tenant" includes a sub-tenant and the assigns of the tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear, whether or not he has attorned to or become the tenant of the landlord. R.S.O. 1937, c. 219, s. 30 (3).

Interpretation.

(2) A landlord shall not distrain for rent on the goods and chattels of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply in favour of a person claiming title under an execution against the tenant, or in favour of a person whose title is derived by purchase, gift, transfer, or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to the interest of the tenant in any goods or chattels on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon

Goods on premises not property of tenant to be exempt.

performance of any condition, nor where goods or chattels have been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord, nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or by any other relative of his, if such other relative lives on the premises as a member of the tenant's family, or by any person whose title is derived by purchase, gift, transfer or assignment from any relative to whom such restriction does not apply.

Goods in store managed by agent who is in default.

(3) Nothing in this section shall exempt from distress goods or chattels in a store or shop managed or controlled by an agent or clerk for the owner of the goods or chattels where the clerk or agent is also the tenant and in default, and the rent is due in respect of the store or shop or premises rented therewith and thereto belonging, if the goods or chattels would have been liable to seizure but for this Act. R.S.O. 1937, c. 219, s. 30 (1, 2).

Interpretation.

31.—(1) In this section, "under-tenant" means a tenant to whom the premises or some part of the premises in respect of which rent is distrained for have been sub-let with the consent of the superior landlord or in default of such consent under the order of the judge of the county or district court as provided by subsection 2 of section 22. 1928, c. 30, s. 2.

Declaration by boarder, under-tenant, or lodger that immediate tenant has no property in goods distrained.

(2) If a superior landlord distrains or threatens to distrain any goods or chattels of an under-tenant, boarder or lodger for arrears of rent due to him by his immediate tenant, the under-tenant, boarder or lodger may serve the superior landlord, or the bailiff or other person employed by him to levy the distress, with a statutory declaration made by the under-tenant, boarder or lodger setting forth that the immediate tenant has no right of property or beneficial interest in such goods or chattels, and that they are the property or in the lawful possession of the under-tenant, boarder or lodger, and also setting forth whether any and what amount by way of rent, board or otherwise is due from the under-tenant, boarder or lodger to the immediate tenant, and to the declaration shall be annexed a correct inventory, subscribed by the under-tenant, boarder or lodger, of the goods and chattels mentioned in the declaration, and the under-tenant, boarder or lodger may pay to the superior landlord, or to the bailiff or other person employed by him, the amount if any, so due, or so much thereof as is sufficient to discharge the claim of the superior landlord.

(3) If the superior landlord, bailiff or other person, after being served with the declaration and inventory, and after the under-tenant, boarder or lodger has paid or tendered to him the amount, if any, which by subsection 2 the under-tenant, boarder or lodger is authorized to pay, levies or proceeds with a distress on the goods or chattels of the under-tenant, boarder or lodger the superior landlord, bailiff or other person shall be guilty of an illegal distress, and the under-tenant, boarder or lodger may replevy the goods or chattels in any court of competent jurisdiction, and the superior landlord shall also be liable to an action, at the suit of the under-tenant, boarder or lodger, in which the truth of the declaration and inventory may be inquired into.

Penalty for improper levy.

(4) Any payment made by an under-tenant, boarder or lodger pursuant to subsection 2 shall be a valid payment on account of the amount due from him to the immediate tenant.

Effect of payments by under-tenant, boarder or lodger.

R.S.O. 1937, c. 219, s. 31 (1-3).

32.—(1) A tenant in default for non-payment of rent shall not be entitled to the benefit of the exemption provided for by section 29 unless he gives up possession of the premises forthwith or is ready and offers to do so.

Duty of tenant claiming exemption to surrender premises.

(2) The offer may be made to the landlord or to his agent, and the person authorized to seize and sell the goods and chattels, or having the custody of them for the landlord, shall be considered an agent of the landlord for the purpose of the offer and surrender to the landlord of possession. R.S.O. 1937, c. 219, s. 32.

To whom offer of surrender to be made.

33.—(1) Where a landlord desires to seize exempted goods he shall, after default has been made in the payment of rent and before or at the time of seizure, serve the tenant with a notice (Form 1).

Seizure of exempted goods.

(2) The surrender of possession in pursuance of the notice shall be a determination of the tenancy. R.S.O. 1937, c. 219, s. 33.

Effect of surrender of possession.

34.—(1) A tenant may set off against the rent due a debt due to him by the landlord.

Right of set-off.

(2) Notice of the claim of set-off (Form 2) may be given before or after the seizure.

Notice thereof.

(3) When the notice is given the landlord shall be entitled to distrain, or to proceed with the distress, only for the balance of the rent after deducting any debt justly due by him to

Effect of notice.

the tenant which is mentioned in the notice. R.S.O. 1937, c. 219, s. 34.

Service of notices.

35.—(1) Service of notices under sections 27, 33 and 34 shall be made either personally or by leaving the same with a grown-up person in and apparently residing on the premises occupied by the person to be served.

Posting up notice in lieu of service.

(2) If the tenant cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of the notice on some conspicuous part of the premises shall be good service. R.S.O. 1937, c. 219, s. 35.

Formal defects not to invalidate.

36. No proceeding under sections 32 to 35 shall be rendered invalid by any defect in form. R.S.O. 1937, c. 219, s. 36.

Lien of landlord in bankruptcy, etc.

37.—(1) In case of an assignment for the general benefit of creditors, or an order being made for the winding up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, the preferential lien of the landlord for rent shall be restricted to the arrears of rent due during the period of three months next preceding, and for three months following the execution of the assignment, and from thence so long as the assignee retains possession of the premises, but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, liquidator or trustee for the period of his occupation.

Rights of assignee.

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement or the legal effect thereof, in case of an assignment for the general benefit of creditors, or an order being made for the winding up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, the assignee, liquidator or trustee may at any time within three months thereafter for the purposes of the trust estate and before he has given notice of intention to surrender possession or disclaim, by notice in writing elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by the lease or agreement, and he may upon payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person who will covenant to observe and perform its terms and agree to conduct upon the demised premises a trade or business which is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor, and who on application of the assignee,

liquidator or trustee, is approved by a judge of the Supreme Court as a person fit and proper to be put in possession of the leased premises. R.S.O. 1937, c. 219, s. 37.

38.—(1) The assignee, liquidator or trustee shall have the further right, at any time before so electing, by notice in writing to the landlord, to surrender possession or disclaim any such lease, and his entry into possession of the leased premises and their occupation by him, while required for the purposes of the trust estate, shall not be deemed to be evidence of an intention on his part to elect to retain possession pursuant to section 37. Election to surrender.

(2) Where the assignor, or person or firm against whom a receiving order has been made in bankruptcy, or a winding up order has been made, being a lessee, has, before the making of the assignment or such order demised any premises by way of under-lease, approved or consented to in writing by the landlord, and the assignee, liquidator or trustee surrenders, disclaims or elects to assign the lease the under-lessee shall, if he so elects in writing within three months of such assignment or order, stand in the same position with the landlord as though he were a direct lessee from the landlord but subject, except as to rental payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent company was subject to under the lease at the date of the assignment or order, but the under-lessee shall in such event be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the debtor, and if such last mentioned rental was greater than that payable by the debtor to the said landlord the under-lessee shall be required to covenant to pay to the landlord the like greater rental. Rights of sub-tenants.

(3) In the event of any dispute arising under this section or section 37 the dispute shall be disposed of by a judge of the Supreme Court upon a summary application. R.S.O. 1937, c. 219, s. 38. Settlement of disputes.

DISTRESS

39. Every person may have the like remedy by distress, and by impounding and selling the property distrained in cases of rents seck, as in case of rent reserved upon lease. R.S.O. 1937, c. 219, s. 39. Distress for rents seck.

40. A person having any rent due and in arrear, upon any lease for life or lives or for years, or at will, ended or determined, may distrain for such arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if such distress is made within six months after the determination of the lease, Distress for arrears on leases determined.

and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due. R.S.O. 1937, c. 219, s. 40.

Right of persons entitled to rent during life of another to recover same after death.

41. A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life. R.S.O. 1937, c. 219, s. 41.

Distress to be reasonable.

42. Distress shall be reasonable. R.S.O. 1937, c. 219, s. 42.

PROPERTY LIABLE TO DISTRESS

Right to distrain grain, etc.

43. A person having rent due and in arrear upon any demise, lease, or contract may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent, and may lock up or detain the same in the place where the same is found, for or in the nature of a distress until the same is replevied, and in default of the same being replevied, may sell the same after appraisement thereof is made; but such grain or hay so distrained shall not be removed by the person distraining, to the damage of the owner thereof out of the place where the same is found and seized, but shall be kept there, as impounded, until it is replevied or sold in default of replevying. R.S.O. 1937, c. 219, s. 43.

Right to distrain cattle or live stock.

44.—(1) A landlord may take and seize, as a distress for arrears of rent, any cattle or live stock of his tenant feeding or pasturing upon any highway, or on any way belonging to the demised premises or any part thereof.

Distress of standing crops.

(2) Subject to subsection 4, a landlord may take and seize standing crops as a distress for arrears of rent, and may cut, gather, make, cure, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time appraise, sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charges of such distress, appraisement and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, cured and made and not before.

(3) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode. Tenant's right to notice of place of keeping.

(4) If, after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the standing crops so distrained shall be delivered up to the tenant. Satisfying distress of standing crops.

(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods, and it shall not be necessary for the landlord to reap, thresh, gather or otherwise market the same. Sale of standing crops.

(6) Any person purchasing standing crops at such sale shall be liable for the rent of the land upon which the same are standing at the time of the sale, and until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it. R.S.O. 1937, c. 219, s. 44. Liability of purchaser of standing crops.

45. Beasts that gain the land and sheep shall not be distrained if there are other chattels sufficient to satisfy the demand. R.S.O. 1937, c. 219, s. 45. Conditional exemption of certain beasts.

WHERE DISTRESS MAY BE TAKEN

46. Save as herein otherwise provided, goods or chattels which are not at the time of the distress upon the premises in respect of which the rent distrained for is due, shall not be distrained for rent. R.S.O. 1937, c. 219, s. 46. Chattels not to be distrained off the premises.

FRAUDULENT REMOVAL

47.—(1) Where any tenant, for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements or hereditaments, upon the demise or holding whereof any rent is reserved, due, or made payable, fraudulently or clandestinely conveys away, or carries off or from such premises his goods or chattels to prevent the landlord from distraining the same for arrears of rent so Landlords may dis-train goods fraudulently carried off the premises.

reserved, due, or made payable, the landlord or any person by him for that purpose lawfully empowered, may, within 30 days next ensuing such conveying away or carrying off, take and seize such goods and chattels wherever the same are found, as a distress for such arrears of rent, and sell or otherwise dispose of the same in such manner as if such goods and chattels had actually been distrained by the landlord upon such premises for such arrears of rent.

Exception.

(2) No landlord or other person entitled to such arrears of rent shall take or seize, as a distress for the same, any such goods or chattels which have been sold in good faith and for a valuable consideration, before such seizure made, to any person not privy to such fraud. R.S.O. 1937, c. 219, s. 47.

Right of landlord to break open houses where goods fraudulently secured.

48. Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant, or agent, or other person aiding or assisting therein, are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened, or otherwise secured so as to prevent them from being taken and seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, such goods and chattels, first calling to his assistance a constable or peace officer who is hereby required to aid and assist therein, and, in case of a dwelling-house, oath being also first made of a reasonable ground to believe that such goods or chattels are therein, and, in the daytime, break open and enter into such house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent as he might have done if they were in an open field or place upon the premises from which they were so conveyed or carried away. R.S.O. 1937, c. 219, s. 48.

Penalty for fraudulently removing, or assisting to remove, goods.

49. If a tenant so fraudulently removes, conveys away or carries off his goods or chattels, or if any person wilfully and knowingly aids or assists him in so doing, or in concealing the same, every person so offending shall forfeit and pay to the landlord double the value of such goods, to be recovered by action in any court of competent jurisdiction. R.S.O. 1937, c. 219, s. 49.

IMPOUNDING DISTRESS

Beasts, distrained not to be driven out of the municipality.

50.—(1) Beasts or cattle distrained shall not be removed or driven out of the city, town, village or township in which they are distrained, except to a fitting pound or enclosure within the same county or district not more than three miles distant from the place where the distress is taken.

(2) No cattle or other goods or chattels distrained or Impounding. taken by way of distress for any cause at one time shall be impounded in several places.

(3) Every person offending against this section shall forfeit Penalty. to the person aggrieved \$20 in addition to the damages sustained by him.

(4) Any person lawfully taking any distress for any kind of rent may impound or otherwise secure the distress so made in such place or on such part of the premises chargeable with the rent as is most fit and convenient for that purpose, and may appraise, sell and dispose of the same upon the premises, and it shall be lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured to view, appraise and buy, and to carry off or remove the same on account of the purchaser thereof. R.S.O. 1937, c. 219, s. 50.

Where goods may be impounded.

POUND BREACH OR RESCUE

51. Upon any pound breach or rescue of goods or chattels distrained for rent the person offending or the owner of the goods distrained in case the same are afterwards found to have come to his use or possession, shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him. R.S.O. 1937, c. 219, s. 51.

Pound breach or rescue, damages for.

SALE OF GOODS DISTRAINED

52. Where any goods or chattels are distrained for any rent reserved and due upon any demise, lease or contract, and the tenant or owner of them does not, within five days next after such distress taken and notice thereof, with the cause of such taking, left at the dwelling house or other most conspicuous place on the premises charged with the rent distrained for, replevy the same, then, after such distress and notice and the expiration of such five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn to appraise the same truly, according to the best of their understandings, a memorandum of which oath is to be endorsed on the inventory, and after such appraisal the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of such distress, appraisal and sale, and shall hold the overplus, if any, for the owner's use and pay the same over to him on demand. R.S.O. 1937, c. 219, s. 52.

Sale of distress, when it may be made.

WRONGFUL OR IRREGULAR DISTRESS

Irregularities not to make distress void *ab initio*.

53. Where any distress is made for any kind of rent justly due, and any irregularity or unlawful act is afterwards done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself shall not be therefore deemed to be unlawful, nor the person making it be deemed a trespasser *ab initio*, but the person aggrieved by the unlawful act or irregularity may recover by action full satisfaction for the special damage sustained thereby. R.S.O. 1937, c. 219, s. 53.

Wrongful distress.

54.—(1) A distrainer who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

Where no rent due.

(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goods or chattels distrained and sold, his executors or administrators shall be entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale. R.S.O. 1937, c. 219, s. 54.

GOODS TAKEN IN EXECUTION NOT TO BE REMOVED WITHOUT
PAYMENT OF RENT

Goods taken in execution not to be removed till rent paid.

55.—(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise shall not be liable to be taken by virtue of any execution issued out of the Supreme Court or out of a county or district court on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

When execution may be proceeded with.

(2) If such arrears exceed one year's rent the party at whose suit such execution is sued out, on paying the landlord or his bailiff one year's rent, may proceed to execute his judgment.

What to be paid to execution creditor.

(3) The sheriff or other officer shall levy and pay to the execution creditor as well the money so paid for rent as the execution money. R.S.O. 1937, c. 219, s. 55.

CROPS SEIZED UNDER EXECUTION

56. Where all or any part of the standing crops of the tenant of any land is seized and sold by any sheriff or other officer by virtue of any writ of execution, such crops, so long as they remain on the land in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such crops by any such sheriff or other officer. R.S.O. 1937, c. 219, s. 56.

Liability of growing crops seized and sold under execution for accruing rent.

LIABILITY OF TENANTS OVERHOLDING

57. Where a tenant for any term for life, lives or years, or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant, wilfully holds over such land or any part thereof after the determination of such term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorized, such tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief. R.S.O. 1937, c. 219, s. 57.

Penalty of double value for overholding.

58. Where a tenant gives notice of his intention to quit the premises by him held at a time mentioned in such notice, and does not accordingly deliver up the possession thereof at the time mentioned in such notice, the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for or recovered, and such double rent or sum shall continue to be paid while such tenant continues in possession. R.S.O. 1937, c. 219, s. 58.

Penalty of double rent for overholding after tenant gives notice to quit.

EXECUTORS OR ADMINISTRATORS

59. The executors or administrators of a landlord may distrain for the arrears of rent due to such landlord in his lifetime, and may sue for the same in like manner as such landlord might have done if living, and the powers and

Right of personal representatives to distrain for arrears,

provisions contained in this Act relating to distresses for rent shall be applicable to the distresses so made. R.S.O. 1937, c. 219, s. 59.

ATTORNMENT

Nullity of attornment to stranger.

60. Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be absolutely null and void, and the possession of his landlord shall not be deemed to be changed, altered or affected by any such attornment; but nothing herein shall vacate or affect any attornment made pursuant to and in consequence of a judgment or order of a court, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage has become forfeited. R.S.O. 1937, c. 219, s. 60.

Attornment of tenant, in what cases not necessary.

61.—(1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

Tenant not to be prejudiced.

(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of such grant by the grantee. R.S.O. 1937, c. 219, s. 61.

RENEWALS—CHIEF LEASE MAY BE RENEWED WITHOUT SURRENDER OF UNDER-LEASE

Chief leases may be renewed without surrendering all the under-leases.

62.—(1) Where a lease is duly surrendered in order to be renewed and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the under-leases, be as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

Rights and remedies of parties thereunder.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised as if the original lease had been kept on foot and continued, and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under-lease for the rents and duties reserved by such new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such under-lease was derived, as he would

have had if such former lease had been still continued or as he would have had if the respective under-leases had been renewed under such new principal lease. R.S.O. 1937, c. 219, s. 62.

RENEWAL OF LEASE BY ABSENTEES

63.—(1) Where any person who, in pursuance of any covenant or agreement in writing, if within Ontario and amenable to the process of the Supreme Court, might be compelled to execute any lease by way of renewal, is not within Ontario, or is not amenable to the process of the court, the court, upon the motion of any person entitled to such renewal, whether such person is or is not under any disability, may direct such person as the court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

Who may renew on behalf of persons out of Ontario.

(2) A new lease executed by the person so appointed shall be as valid as if the person in whose name the same was made was alive and not under any disability and had himself executed it.

Validity of such new lease.

(3) In every such case it shall be in the discretion of the court to direct an action to be brought to establish the right of the person seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it has been entered.

Discretion of court to direct action to be brought.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement unless the sum or sums of money, if any, which ought to be paid on such renewal and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

Conditions.

(5) All sums of money which are had, received or paid for, or on account of, the renewal of any lease by any person out of Ontario or not amenable to the process of the Supreme Court, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the Supreme Court to such account, and be applied and disposed of, as the court shall direct.

Premiums, how to be paid.

(6) The court may order the costs and expenses of and relating to the applications, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as the court deems proper. R.S.O. 1937, c. 219, s. 63.

Costs.

PART II

DISPUTES AS TO RIGHT TO DISTRAIN

Interpre-
tation.

64. In this Part, "judge" means judge of the county or district court of the county or district in which a distress to which this Part applies is made. R.S.O. 1937, c. 219, s. 64.

Disputes as
to right to
distrain.

65.—(1) Where goods or chattels are distrained by a landlord for arrears of rent and the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, or the tenant claims to set off against the rent a debt which the landlord disputes, the landlord or the tenant may apply to the judge to determine the matters so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just.

Application
to judge by
landlord or
tenant.

(2) Where the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the landlord or the tenant may, before any distress has been made, apply to the judge to determine the matter so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just. R.S.O. 1937, c. 219, s. 65.

Order of
judge
pending de-
termination
of dispute.

66. Where notice of such an application has been given to the landlord or tenant as the case may be, the judge, pending the disposition of it by him, may make such order as he may deem just for the restoration to the tenant of the whole or any part of the goods or chattels distrained, or preventing a distress being made, upon the tenant giving security, by payment into court or otherwise as the judge may direct, for the payment of the rent which is found due to the landlord and for the costs of the distress and of the proceedings before the judge and of any appeal from his order, or such of them as the tenant may be ordered to pay. R.S.O. 1937, c. 219, s. 66.

Jurisdiction
of judge.

67. The judge shall have jurisdiction and authority to determine any question arising upon the application which the court of which he is judge has jurisdiction to determine in an action brought in that court. R.S.O. 1937, c. 219, s. 67.

When judge
to direct
that action
be brought
or issue
tried.

68. Where the amount of the rent claimed by the landlord exceeds \$800, or where any question is raised which a county or district court would not have jurisdiction to try in an action brought in such court, the judge shall not, with-

out the consent in writing of the landlord and the tenant, deal with the application summarily, but shall direct an action to be brought or an issue to be tried in the Supreme Court for the determination of the matters in dispute. R.S.O. 1937, c. 219, s. 68.

69.—(1) Where the judge directs an action to be brought or an issue to be tried under section 68, he shall have the like power as to the restoration to the tenant of the goods or chattels or of any part of them and to the prevention of a distress being made as is conferred by section 66, and where it is exercised the security shall be as provided in that section except that, as to costs, it shall be not only for the costs of the proceedings before the judge but also for the costs of the action or issue, including any appeal therein or such of them as the tenant may be ordered to pay. Interim order for restoration of goods on security being given, etc.

(2) The Supreme Court shall determine by whom and in what manner the costs of the action or issue and of the application to the judge are borne and paid. Cost of proceedings.

(3) Judgment may be entered in accordance with the direction of the court, made at or after the trial, and may be enforced in like manner as a judgment of the Court. R.S.O. 1937, c. 219, s. 69. Entry of judgment.

70. Where the amount claimed by the landlord does not exceed \$100, the decision of the judge shall be final. R.S.O. 1937, c. 219, s. 70. When decision of judge to be final.

71. Where the amount claimed by the landlord exceeds \$100, an appeal shall lie from any order of the judge made on an application to him under section 65 by which the matters in dispute are determined, in like manner as if the same were a judgment of the court of which he is judge pronounced in an action. R.S.O. 1937, c. 219, s. 71. Appeal from summary determination.

72. Where an issue is tried, there shall be the same right of appeal from the judgment as if the judgment had been pronounced in an action. R.S.O. 1937, c. 219, s. 72. Appeal when action brought or issue tried.

73. Where the amount claimed by the landlord does not exceed \$100, the costs of the proceedings before the judge shall be on the division court scale, and where the amount claimed exceeds \$100 they shall be on the county court scale, except in an action or issue in the Supreme Court directed under section 68. R.S.O. 1937, c. 219, s. 73. Scale of costs.

Other remedies of tenant.

74. Nothing in this Part shall take away or affect any remedy which a tenant may have against his landlord or require a tenant to proceed under this Part instead of by bringing an action, but where, instead of proceeding under this Part, he proceeds by action, the court in which the action is brought, if of opinion that it was unnecessarily brought and that a complete remedy might have been had by a proceeding under this Part, may direct the tenant, although he succeeds, to pay any additional costs occasioned by his having brought the action. R.S.O. 1937, c. 219, s. 74.

PART III

OVERHOLDING TENANTS

Application to county court judge against overholding tenant.

75.—(1) Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply upon affidavit to the judge of the county or district court of the county or district in which the land lies to make the inquiry hereinafter provided for.

Inquiring and determination.

(2) The judge shall in writing appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

Notice thereof to be served on the tenant.

(3) Notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application. R.S.O. 1937, c. 219, s. 75.

76. The proceedings under this Part shall be entitled in Proceedings, the county or district court of the county or district in which how the land lies, and shall be styled: entitled.

In the matter of (*giving the name of the party complaining*),
Landlord, against (*giving the name of the party complained against*) Tenant.

R.S.O. 1937, c. 219, s. 76.

77.—(1) If, at the time and place appointed, the tenant Proceedings fails to appear, the judge, if it appears to him that the tenant in default of wrongfully holds against the right of the landlord, may order appearance. a writ of possession (Form 3) directed to the sheriff of the county or district in which the land lies to be issued commanding him forthwith to place the landlord in possession of the land.

(2) If the tenant appears, the judge shall, in a summary In case of manner, hear the parties and their witnesses, and examine appearance. into the matter, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord, he may order the issue of the writ. R.S.O. 1937, c. 219, s. 77.

78. The judge shall have the same power to amend or Power of excuse irregularities in the proceedings as he would have in amendment. an action. R.S.O. 1937, c. 219, s. 78.

79.—(1) An appeal shall lie to the Court of Appeal from Appeal. the order of the judge granting or refusing a writ of possession and the provisions of *The County Courts Act* as to appeals Rev. Stat., shall apply to such an appeal. c. 75.

(2) If the Court of Appeal is of opinion that the right to Discharging possession should not be determined in a proceeding under order for this Part, the court may discharge the order of the judge, possession on appeal. and the landlord may in that case proceed by action for the recovery of possession.

(3) When the order is discharged, if possession has been Restoring given to the landlord under a writ of possession, the court tenant to may direct that possession be restored to the tenant. R.S.O. possession. 1937, c. 219, s. 79.

FORM 1

(Section 33 (1))

NOTICE TO TENANT

Take notice that I claim \$.....for rent due to me in respect of the premises which you hold as my tenant, namely (*here briefly describe them*); and unless the said rent is paid, I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice further, that if you neither pay the said rent nor give me possession of the said premises within three days after the service of this notice, I am by *The Landlord and Tenant Act* entitled to seize and sell, and I intend to seize and sell all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

Dated this.....day of....., 19.....

A. B. (*landlord*).

To C. D. (*tenant*).

R.S.O. 1937, c. 219, Form 1.

FORM 2

(Section 34 (2))

NOTICE TO LANDLORD

Take notice that under *The Landlord and Tenant Act* I wish to set off against rent due by me to you the debt which you owe to me on your promissory note for.....dated.....
(*or as the case may be*).

Dated this.....day of....., 19.....

C. D. (*tenant*).

R.S.O. 1937, c. 219, Form 2.

FORM 3

(Section 77 (1))

WRIT OF POSSESSION

ONTARIO,

To Wit:

George the Sixth, by the Grace of God, of Great Britain, Ireland, and the
British Dominions beyond the Seas, King, Defender of the Faith.

[L.S.]

To the Sheriff of the.....

Greeting:

Whereas..... Judge of the..... Court
of....., by his order dated the.....
day of....., 19....., made in pursuance of *The
Landlord and Tenant Act*, on the complaint of.....
..... against....., adjudged
that..... was entitled to the possession
of
with the appurtenances in your bailiwick, and that a Writ should issue
out of Our said Court accordingly (*if costs are awarded add* and also ordered
and directed that the said..... should pay the
costs of the proceedings had under the said Act, which have been taxed
at the sum of.....).

THEREFORE, WE COMMAND YOU that without delay you cause the said
..... to have possession of the said land
and premises, with the appurtenances (*if costs are awarded add* and We
also command you that of the goods and chattels and lands and tenements
of the said..... in your bailiwick,
you cause to be made..... being the said
costs so taxed and have that money in Our said Court immediately after
the execution hereof, to be rendered to the said.....).

And in what manner you shall have
executed this Writ make appear to Our said Court, immediately after the
execution hereof, and have there then this Writ.

Witness,, Judge of Our said
Court at, this..... day
of....., 19.....

Clerk.

Issued from the office of the Clerk of the County (*or District*) Court of
the County (*or United Counties, or District*) of.....
Clerk.

CHAPTER 200

The Law Society Act

1. In this Act, "Society" means The Law Society of Upper Canada. R.S.O. 1937, c. 221, s. 1. Interpretation.

2. The treasurer and benchers of the Society, and their successors, shall be a body corporate and politic by the name of "The Law Society of Upper Canada", and may purchase, acquire, take by gift, bequest, donation or otherwise, for the purposes of the Society but for no other purpose, and may sell, mortgage, lease or dispose of any real or personal property. R.S.O. 1937, c. 221, s. 2. Name.

3. The judges of the Supreme Court shall be visitors of the Society. R.S.O. 1937, c. 221, s. 3. Visitors.

4. Members of the Bar of Ontario and persons admitted to the Society as students-at-law shall be members of the Society. R.S.O. 1937, c. 221, s. 4. Members.

5. The following, if and while continuing members of the Bar of Ontario, shall *ex officio* be benchers of the Society: *Ex officio* benchers.

1. The Minister of Justice and the Solicitor-General of Canada.
2. The Attorney-General for Ontario, and every person who has held that office.
3. Every person who has for seven consecutive years held the office of treasurer of the Society.
4. Every person who has been elected a bencher at four quinquennial elections.
5. Every retired judge of the Supreme Court of Canada or of the Exchequer Court of Canada who was at the time of his appointment a member of the Bar of Ontario.
6. Every retired judge of the Supreme Court of Ontario. R.S.O. 1937, c. 221, s. 5; 1944, c. 30, s. 1 (1); 1950, c. 79, s. 11.

Elective
benchers.

6. The benchers, exclusive of the *ex officio* members, shall be 30 in number and shall be elected from the members of the Bar as hereinafter provided. R.S.O. 1937, c. 221, s. 6.

Appoint-
ment of
scrutineers.

7.—(1) The benchers shall, during the month of February next preceding an election, appoint, with their assent, two members of the Bar, who, with the treasurer, shall act as scrutineers at the election, and who shall not be eligible for election to the office of bencher, and a third person, who shall be a member of the Bar and not a candidate, and assist the treasurer and act for him in his absence, in counting the votes.

Temporary
vacancies.

(2) The treasurer may fill any vacancy in the office of scrutineer, and if he sees fit may appoint temporarily any qualified person to act as substitute for any scrutineer or other person appointed during the absence of such person. R.S.O. 1937, c. 221, s. 7.

Election,
when to
be held.

8.—(1) An election shall be held on the first Thursday after the second Wednesday in April of every fifth year after 1941; but if the scrutineers are unable to complete the scrutiny upon such day, the same shall be continued from day to day until the election is declared.

Absence of
scrutineer.

(2) If any scrutineer is absent during the scrutiny, the others may proceed therewith. R.S.O. 1937, c. 221, s. 8.

Who may
vote and for
whom.

9. Every person who is a member of the Bar in good standing and not in arrear for fees to the Society shall be an elector qualified to vote for 30 persons for benchers pursuant to this Act. R.S.O. 1937, c. 221, s. 9.

List of
voters.

10.—(1) The secretary shall, in the month of January, previous to the time for holding an election, make out and sign an alphabetical list of the members of the Bar who are entitled to vote at the election.

Complaints
or errors in
the list.

(2) The list may be examined by any member of the Bar at all reasonable times at the office of the secretary, and if, within 15 days after the last day of January, a member of the Bar complains to the secretary, in writing, of the improper omission or insertion of any name in the list, the secretary shall forthwith examine into the complaint and rectify any error.

Appeal to
scrutineers.

(3) If any person is dissatisfied with the decision of the secretary, he may appeal to the scrutineers; whose decision

shall be final, and the list shall remain or be altered in accordance with their decision, and the list as it stands on the 5th day of March shall be signed by the secretary and scrutineers and shall be the settled list of persons entitled to vote at the election.

(4) The secretary shall add to the list the names of all persons called to the Bar after the last day of January and before the day fixed for the receipt of nomination papers, and no alteration shall be made in the list except as provided in this section. R.S.O. 1937, c. 221, s. 10. Adding persons called to the Bar in term preceding.

11. No person shall be eligible as a benchers at any election who is not qualified to vote at the election. R.S.O. 1937, c. 221, s. 11. Qualifications of benchers.

12. At all elections retiring benchers shall be eligible for re-election. R.S.O. 1937, c. 221, s. 12. Retiring benchers eligible.

13.—(1) No person shall be elected as a benchers unless he has been nominated as hereinafter mentioned, and every vote cast for any person not so nominated shall be void. Nomination required.

(2) The nomination shall be in writing by a nomination paper, which shall be signed by at least 10 of the persons entitled to vote at the election. Nomination paper.

(3) The nomination paper shall be delivered at the office of the secretary or sent by mail to him, so as to be received during the first 15 days of the month of March of the year in which the election is to take place, and if not so delivered or received shall be invalid and shall not be acted upon. Delivery.

(4) The secretary shall, within the first four days after the last day for the receipt of nomination papers, mail a notice in writing to each nominee informing him of his nomination, but the failure to mail a notice or the non-receipt thereof by the nominee shall not invalidate the election. Notice to nominee.

(5) Any person who is nominated may refuse to become a candidate, and he shall be deemed not to have been so nominated and his name shall not be included in the list of candidates if he notifies the secretary in writing of his refusal within four days after the mailing of a notice to him. Declining nomination.

(6) If the number of persons who remain as candidates is not greater than the number of benchers to be elected, they shall be elected benchers. R.S.O. 1937, c. 221, s. 13. Election by acclamation.

Proceedings
in case
of poll.

14. In case a poll is necessary the secretary shall forthwith, after the time for receiving notice of refusal to be a candidate has expired, send to each member of the Bar, whose name is on the list of persons entitled to vote, if his residence is known to the secretary, one copy of the form of voting paper with a list of the candidates which shall indicate by asterisks and a footnote those whose term of office as benchers is about to expire. R.S.O. 1937, c. 221, s. 14.

When vot-
ing papers
to be
delivered.

15. The votes shall be given by closed voting papers (Form 1) delivered at the office of the secretary or sent by mail to him so as to be received thereat not later than the second Wednesday of April of the year of the election. R.S.O. 1937, c. 221, s. 15.

Counting
the votes.

16. Beginning on the first Thursday after the second Wednesday of April and proceeding continuously thereafter, except on holidays, the voting papers shall be opened by the secretary in the presence of the treasurer or the person appointed to assist him, and of the scrutineers who shall scrutinize and count the votes and keep a record thereof in a book to be provided by the Society. R.S.O. 1937, c. 221, s. 16.

Void vote.

17. A vote cast for any person who is not upon the list of candidates or who is ineligible to be a bencher or who is a bencher *ex officio* shall be null and void, and the election shall be declared as if such vote had not been cast. R.S.O. 1937, c. 221, s. 17.

Voting for
more than
30 members.

18. In the event of a voter placing more than 30 names on his voting paper, the first 30 only shall be counted notwithstanding that any of the 30 persons so named may be ineligible for election or is not a candidate or is an *ex officio* bencher. R.S.O. 1937, c. 221, s. 18.

Equality of
votes.

19. If an equality of votes between two or more persons leaves the election of one or more benchers undecided, the scrutineers shall forthwith put into a ballot box a number of papers with the names of the candidates having such equality of votes written thereon, one for each candidate, and the secretary shall draw by chance from the ballot box, in the presence of the scrutineers, one or more of such papers sufficient to make up the required number, and the persons whose names are upon the papers so drawn shall be declared to have been elected as benchers. R.S.O. 1937, c. 221, s. 19.

Who to be
declared
elected.

20.—(1) The thirty persons who have the highest number of votes shall be declared by the secretary to have been elected as benchers for the ensuing term of five years.

(2) If among the thirty persons who have the highest number of votes there is any bench^{Where}er who by virtue of such election becomes *ex officio* a bench^{ex officio}er, the scrutineers shall so report and, subject to section 17, the thirty other persons having the highest number of votes shall be declared to have been elected as benchers for the ensuing term of five years. R.S.O. 1937, c. 221, s. 20.

21. Any person entitled to vote at any such election shall be entitled to be present at the counting of the votes. R.S.O. 1937, c. 221, s. 21. ^{Who may be present at the counting of votes.}

22. If from any cause an election provided for by this Act is not held as hereinbefore provided, the benchers in convocation shall make provision for holding the same and fix the dates for the nomination and the other proceedings for taking, counting and recording the votes thereat and declaring the result thereof, and such proceedings shall, so far as practicable, be conformable with those provided by this Act. R.S.O. 1937, c. 221, s. 22. ^{When election not held at proper time.}

23. Upon the completion of the scrutiny and counting of the votes the secretary shall forthwith declare the result of the election as certified by the scrutineers and report the same to the Society, and shall cause the names of the persons elected to be published in the next issue of *The Ontario Gazette*. R.S.O. 1937, c. 221, s. 23. ^{Declaration of result.}

24. The benchers may make such regulations as they consider expedient, not contrary to this Act, for regulating the procedure under the preceding sections, and for the remuneration of the scrutineers. R.S.O. 1937, c. 221, s. 24. ^{Regulations for elections and remuneration to scrutineers.}

25. Until all petitions in respect of the election have been decided the voting papers relating to the election shall not be destroyed, but together with all other papers in connection with the election, shall be retained by the secretary. R.S.O. 1937, c. 221, s. 25. ^{Preservation of voting papers.}

26. No person shall sign the name of any other person to a voting paper, or alter, or add to, or falsify, or fill up any blank in a voting paper signed by another person, or deliver or cause to be delivered, or send or cause to be sent, by post or otherwise, to the secretary, a false voting paper or a voting paper which has been added to, or falsified or in which a blank has been filled up after the same was signed. R.S.O. 1937, c. 221, s. 26. ^{False voting.}

Absence of
secretary.

27. If the office of secretary is vacant or if the secretary is unable from any cause to act at or in connection with an election, the treasurer shall appoint under his hand some other person to act as secretary *pro tempore*, and the person so appointed shall perform all the duties of the secretary as prescribed by this Act. R.S.O. 1937, c. 221, s. 27.

Term of
office of
benchers.

28. The elected benchers shall take office at the first meeting following their election, and, subject to this Act, shall hold office until their successors are elected. R.S.O. 1937, c. 221, s. 28.

Vacation of
seat for non-
attendance.

29.—(1) The seat of a bencher, other than an *ex officio* bencher, who has failed to attend the meetings of the benchers for nine consecutive meetings shall at the expiration of that period *ipso facto* become vacant.

Suspension
of certain
ex officio
benchers for
non-payment
of fees.

(2) The right of any bencher who is *ex officio* by reason of having been elected at four quinquennial elections, to sit and vote at meetings of the benchers, shall be suspended if and while he is in default in payment of any fees to the Society. R.S.O. 1937, c. 221, s. 29.

Committee
on election
petitions.

30. The benchers may appoint a committee to inquire with respect to the due election of any bencher whose election may be petitioned against by any member of the Bar who voted at the election, and, after such inquiry, to report such bencher as duly or not duly elected or qualified according to the fact, and, if necessary, to report the name of the candidate having the highest number of votes next after the candidate declared elected who had the lowest number of votes, in lieu of the person reported not duly elected or qualified, and, on the confirmation of the report by the benchers, other than persons petitioned against, present at any meeting called for that purpose, the person so reported in lieu of the person petitioned against shall be deemed to be the duly elected and qualified bencher. R.S.O. 1937, c. 221, s. 30.

Time for
filing election
petition.

31.—(1) A petition shall not be entertained unless it is filed with the secretary before the 10th day of May next succeeding the election, and contains a statement of the grounds on which the election is disputed, nor unless a copy thereof is served upon the bencher whose election is disputed before the 15th day of May, and no ground not mentioned in the petition shall be entertained on the hearing thereof.

Hearing
petitions.

(2) The benchers, or the committee appointed for that purpose, shall before the last day of such month, appoint a day for the hearing of the petition and give notice of such

day to the petitioner and to the person whose election is disputed, and all such petitions shall be finally disposed of within one month from the date of filing. R.S.O. 1937, c. 221, s. 31.

32. The petitioner shall deposit with the secretary \$100 Deposit for costs. to meet any costs which the benchers petitioned against may in the opinion of the committee before which the petition is heard be put to; and the committee shall have power in the event of such petition being dismissed to award such a sum to be paid to the benchers petitioned against as in their opinion is just and shall have power in their discretion, in the event of it being decided that such benchers were not duly elected or qualified, to award costs to the petitioner, and the costs so awarded shall be recoverable in any court of competent jurisdiction. R.S.O. 1937, c. 221, s. 32.

33.—(1) The benchers shall, at their first meeting after the election, elect one of their number as treasurer, who shall be the president of the Society, and shall hold office until the appointment of his successor, and the election of treasurer shall take place in each year thereafter at such time as may be appointed by the rules of the Society. Election of treasurer.

(2) The retiring treasurer shall be eligible for re-election. Retiring treasurer eligible. R.S.O. 1937, c. 221, s. 33.

34. In case of failure to elect the requisite number of duly qualified benchers under this Act, or in case of any vacancy owing to the death or resignation of any benchers, or to any other cause, the remaining benchers shall, at the next regular meeting or at a meeting specially called for the purpose, supply the deficiency in the number of benchers, or fill the vacancy by electing any person or persons duly qualified under this Act, and the person or persons so elected shall hold office until the next quinquennial election. Vacancies among benchers, how filled. R.S.O. 1937, c. 221, s. 34.

35. The benchers may make rules for the government of the Society, and other purposes connected therewith. Power to make rules. R.S.O. 1937, c. 221, s. 35.

36. The benchers may by rule fix or change the dates for the doing of any act, or the giving of any notice which by this Act is to be done or given in or with reference to any term, but no such rule shall have the effect of prolonging the term of office of any elected benchers. Changing dates for doing acts or giving notices. R.S.O. 1937, c. 221, s. 36.

37. On the hearing of an election petition or upon any inquiry by a committee the benchers or committee shall have power to examine witnesses under oath, and a summons under Power to summon and examine witnesses.

the hand of the treasurer, or under the hands of three benchers, for the attendance of a witness shall have all the force of a subpoena, and any witness not attending in obedience thereto shall be liable to attachment in the Supreme Court. R.S.O. 1937, c. 221, s. 37.

Appoint-
ment of
officers.

38. The benchers may appoint such officers and servants as they may deem necessary for the purposes of the Society. R.S.O. 1937, c. 221, s. 38.

Appoint-
ment of
examiners.

39. The benchers may appoint examiners to conduct the examination of students-at-law and of persons applying to be called to the Bar or to be admitted as solicitors. R.S.O. 1937, c. 221, s. 39.

Legal
education.

40. The benchers may make rules for the improvement of legal education including the establishment and maintenance of a law school; appoint a dean and lecturers with salaries; impose fees and prescribe rules for the attendance of students and others at lectures and for examinations thereon, but not so as to reduce the number of years prescribed by statute for call to the Bar or admission as solicitor, and may establish scholarships and prizes. R.S.O. 1937, c. 221, s. 40.

Call to
the Bar.

41.—(1) The benchers may make such rules as they consider necessary for conducting the examination of persons applying to be called to the Bar and may call and admit to the practice of the law as a barrister any person duly qualified to be so called and admitted according to the provisions of law and the rules of the Society.

Admission
of women.

(2) The benchers may make rules providing for the admission of women to practise as barristers and solicitors. R.S.O. 1937, c. 221, s. 41.

Rules for
examination
of candidates
for admission
as solicitors.

42.—(1) The benchers may make such rules as they consider necessary for conducting the examination of persons applying to be admitted as solicitors, touching the articles and service, and the certificates required to be produced by them before their admission, and as to the fitness and capacity of such persons to act as solicitors.

Suspending
decision.

(2) Where it appears to the benchers expedient for purposes of further inquiry or investigation, they may suspend, for a period not exceeding 12 months, their final decision in respect to granting or refusing a certificate. R.S.O. 1937, c. 221, s. 42.

- 43.** The benchers may make rules and regulations, not contrary to law, and dispense therewith from time to time to meet the special circumstances of any special case respecting,
- (a) the admission of students-at-law, the periods and conditions of study, the call or admission of barristers to practise the law, and all other matters relating to the discipline and honour of the Bar; Rules and regulations to meet special circumstances. Admission of students and call of barristers.
 - (b) the service of students-at-law, the period and conditions of such service, and the admission of solicitors to practise in the courts, and all other matters relating to the discipline and conduct of solicitors and students; R.S.O. 1937, c. 221, s. 43. Articled clerks and admission of solicitors.
 - (c) the opening and keeping by barristers and solicitors of accounts for clients' money at banks, Province of Ontario Savings Offices or other institutions authorized to receive deposits; Accounts for clients' money.
 - (d) the keeping by barristers and solicitors of accounts and records containing proper particulars and information as to moneys received, held, or paid by them for or on account of clients; Particulars as to money received.
 - (e) inquiries or investigations by the benchers or a committee of their number or any other persons for the purpose of ascertaining whether the rules and regulations of the Society are being complied with; Inquiries; investigations.
 - (f) the effect of non-observance of any of the rules or regulations passed under clauses *c*, *d* and *e* and in what cases such non-observance by any barrister or solicitor shall amount to professional misconduct; and Non-observance of rules.
 - (g) the payment to the Society by any barrister or solicitor of the cost of any inspection or audit of his books and accounts in the event that the rules and regulations of the Society in relation thereto, or in relation to the opening and keeping of accounts for clients' moneys at banks, Province of Ontario Savings Offices or other institutions authorized to receive deposits, have not been complied with. 1939, c. 24, s. 1. Cost of inspection or audit.

44.—(1) Where a barrister, solicitor or student-at-law is found by the benchers, after due inquiry by a committee of their number or otherwise, guilty of professional misconduct, or of conduct unbecoming a barrister, solicitor or student-at-law, the benchers may disbar any such barrister, or suspend him from practising as a barrister for such time as they may deem proper; may resolve that any such solicitor is unworthy Powers of benchers to suspend, disbar or expel in case of misconduct.

to practise as a solicitor or that he should be suspended from practising for a period to be named in the resolution; may expel from the Society, and the membership thereof, such student and strike his name from the books of the Society; or may refuse either absolutely or for a limited period to admit such student to the usual examinations, or to grant him the certificate of fitness necessary to enable him to be admitted to practice. R.S.O. 1937, c. 221, s. 44.

Expenses
of investi-
gations.

(2) In addition to or as an alternative for any other penalty, a barrister or solicitor who is found guilty of professional misconduct or conduct unbecoming a barrister or solicitor under this section may be ordered by the benchers to pay the expense, or part of the expense, incurred by the Society in the investigation of any charge or charges in respect of which he has been found guilty and any sum or sums so ordered to be paid may be recovered by the Society by order of the Supreme Court, to be made on summary application. 1939, c. 24, s. 2.

Power of
benchers
to suspend.

45.—(1) Where a barrister or solicitor has been declared certified or found to be mentally incompetent or mentally ill pursuant to the relevant statutes in that behalf, or has failed to pay any fee payable by him to the Society within one year of the date prescribed for the payment thereof, the benchers may, in the case of a barrister, suspend him from practising as a barrister for such time as they may deem proper and may, in the case of a solicitor, resolve that he should be suspended from practising for a period to be named in the resolution.

Applica-
tion for
reinstatement.

(2) Where a barrister or solicitor has been suspended from practising under this section, he may, upon payment of all fees and penalties owing by him to the Society, apply to be reinstated as a barrister or solicitor or both, as the case may be.

Termination
of suspension.

(3) Upon every application made under subsection 2 the benchers may terminate the suspension of such barrister or resolve that the suspension of such solicitor should be terminated on such terms and conditions as they deem proper.

Resolution
to be communicated
to registrar.

(4) A copy of every resolution passed under this section shall be communicated to the Registrar of the Supreme Court, and upon compliance with the terms or conditions of any resolution passed under subsection 3 by the barrister or solicitor named therein, the secretary and the Registrar of the Supreme Court shall do such acts as are necessary to terminate such suspension. 1940, c. 13, s. 1.

46. Upon a barrister being disbarred, all his rights and privileges as a barrister shall thenceforth cease and determine, or, in case he is suspended, he shall, during the period of his suspension, possess no rights or privileges as a barrister, and notice of his being disbarred or suspended shall forthwith be given by the secretary to the Registrar of the Supreme Court. R.S.O. 1937, c. 221, s. 45.

Barrister's
privileges
to cease
when he is
disbarred.

47. Where it has been resolved by the benchers that a solicitor is unworthy to practise, a copy of the resolution shall forthwith be communicated to the Registrar of the Supreme Court. R.S.O. 1937, c. 221, s. 46.

Resolution
of benchers.

48. Upon receipt of any notice under section 46 or 47 an order shall be drawn up by the Registrar of the Supreme Court without any formal motion striking such barrister or solicitor off the roll or suspending him, as may have been determined by the benchers, but any such order may be set aside or varied at any time by the court. R.S.O. 1937, c. 221, s. 47.

Suspending
or striking
off rolls.

49. Any powers which the visitors of the Society may have in matters of discipline are hereby vested in the benchers, and the powers conferred upon the benchers by sections 44 to 48 may be exercised by them without reference to or the concurrence of the visitors. R.S.O. 1937, c. 221, s. 48.

Powers of
visitors as
to discipline
vested in
the benchers.

50. The benchers may make regulations for promoting the efficiency of county law libraries, and may prescribe and enforce remedies for the violation thereof, and may by resolution of convocation cause to be dissolved any county law library association which neglects or refuses to comply with the regulations. R.S.O. 1937, c. 221, s. 49.

Rules as to
county law
libraries.

51. The benchers may establish a fund for the benefit of barristers or solicitors, their widows, orphans or dependants, to be called "The Law Benevolent Fund", and may make all necessary rules and regulations for the management and investment of the fund, and the terms of subscription and appropriation thereof, and the conditions under which the barristers or solicitors, their widows, orphans or dependants shall be entitled to share in such fund. R.S.O. 1937, c. 221, s. 50; 1944, c. 30, s. 2.

Law
Benevolent
Fund.

52.—(1) The benchers may appoint such person or persons, being members of the Society of the degree of barrister, as they may think proper to report and edit the decisions of the courts.

Appoint-
ment of law
reporters.

Tenure of
office.

(2) Such person or persons shall hold office at the pleasure of the benchers, and shall be amenable to them in convocation for the correct and faithful discharge of their duties according to such regulations as the benchers may make in respect thereof.

Benchers to
make
regulations
regarding
the reports.

(3) The benchers shall make regulations for printing and publishing the reports of such decisions, and the distribution of the reports and the price and mode of issuing the same, and all such other regulations in respect thereto as they may at any time consider necessary, and any profits arising from the reports shall form part of the general funds of the Society.

Salaries of
reporters.

(4) The benchers shall determine the salaries to be allowed for such reporting and editing and shall pay the same out of the general funds of the Society. R.S.O. 1937, c. 221, s. 51.

Appropriation
of certain
fees.

53. The fees payable by barristers on call to the Bar and annually, and by solicitors on admission, and for the annual certificate to practise, and by students on admission as such, and by them and others on examinations and attendance on lectures and readings, shall be paid into the general funds of the Society, and shall be such as the benchers may prescribe. R.S.O. 1937, c. 221, s. 52.

Power of
benchers to
fix limits
of financial
year.

54.—(1) The benchers may from time to time fix and adjust by rule the limits of the Society's financial year and shall cause the revenues and expenditures of the Society for each financial year as so fixed to be duly audited by an auditor appointed by the benchers to audit the accounts and report upon the finances of the Society.

Statement
to be sent
to members.

(2) The statement, together with the report of the auditor, shall be furnished annually, within three months after the close of the financial year, to every member of the Society entitled to vote at an election of benchers. R.S.O. 1937, c. 221, s. 53.

Remission
of penalties.

55. The benchers may remit any fee or penalty, or any part thereof, that is payable to the Society. 1940, c. 13, s. 2.

FORM 1

(Section 15)

VOTING PAPER

Law Society Election, 19.....

The appointed scrutineers for this election are Mr. of
....., and Mr. of

I,, of the in the of
....., Barrister, do hereby declare—

1. That the signature hereto is in my proper handwriting.
2. That I vote for the following persons as Benchers of the Law Society:
A.B., of, in the of
C.D., of, in the of
etc. etc.

3. That I have signed no other voting paper at this election.

4. That this voting paper is signed on the day of the date thereof.

Witness my hand, this day of, 19.....

R.S.O. 1937, c. 221, Sched., Form 1.

CHAPTER 201

The Law Stamps Act

1. In this Act,

Interpre-
tation.

(a) "fees" mean the fees and charges mentioned in section 3, and "fee" has a corresponding meaning;

(b) "Treasurer" means Treasurer of Ontario. R.S.O. 1937, c. 27, s. 1, *amended*.

2. The Lieutenant-Governor in Council may direct stamps to be prepared for the purposes of this Act, of such denominations and of such design, form, and colour as he may see fit. R.S.O. 1937, c. 27, s. 2. Issue of stamps.

3. The stamps shall be used in payment of fees and charges payable to the Crown upon legal proceedings under this or any other Act, and under any Order in Council or rule or order of any court. R.S.O. 1937, c. 27, s. 3. Purposes of stamps.

4. Money shall not be paid to or received by any court, or any officer of any court, for any fee. R.S.O. 1937, c. 27, s. 4. No money to be received.

5. No paper or proceeding upon which a fee is payable to the Crown shall be issued, received or acted upon by any court, or by any officer of any court, until a stamp for the amount of such fee has been affixed to the same. R.S.O. 1937, c. 27, s. 5. Stamps to be affixed.

6. No judge or officer of the court shall allow any action or step to be taken upon any document not duly stamped, although no exception is taken thereto by any of the parties. R.S.O. 1937, c. 27, s. 6. Unstamped documents.

7. In cases in which a fee is payable but a document is not required, the stamp shall be affixed to a memorandum retained by the officer. R.S.O. 1937, c. 27, s. 7. Fixing stamp to memorandum.

8. A sheriff, officer or other person shall not serve or execute any writ, rule, order or proceeding, or a copy thereof, upon which a fee is payable, that is not duly stamped. R.S.O. 1937, c. 27, s. 8. Officers not to serve unstamped process.

When
further
stamp
required.

9. A paper or proceeding that has been duly stamped for the purpose for which it has been used shall not be considered as stamped for any other purpose, where another fee is payable thereon for any other or further use of the same. R.S.O. 1937, c. 27, s. 9.

Supplying
innocent
omission.

10.—(1) A person who has omitted to duly stamp a paper or proceeding may apply to the court or to a judge thereof for leave to have the same duly stamped, and where this Act has not been wilfully violated, the application shall, on such terms as may be deemed proper, be granted for the stamping of such paper or proceeding with stamps of such amount beyond the fee due thereon as may be thought reasonable, not exceeding ten times the amount of the fee.

Retroactive
effect of
order.

(2) The affixing of the stamps shall have the same effect as if the paper or proceeding had been duly stamped in the first instance. R.S.O. 1937, c. 27, s. 10.

Where
stamps
not affixed,

11.—(1) Where the officer inspecting legal offices finds a paper or proceeding that should have had stamps affixed to it, not stamped, or insufficiently stamped, he shall require the officer whose duty it was to see that it was properly stamped, to affix to such paper or proceeding stamps of a sufficient amount.

Idem.

(2) The officer directing stamps to be affixed shall cancel them, and the affixing of such stamps by direction of the officer shall have the same effect as if the paper or proceeding had been duly stamped in the first instance. R.S.O. 1937, c. 27, s. 11.

Duty of
officer
to cancel.

12. When a stamp has been affixed to a paper or proceeding, the officer who issues or receives it shall forthwith cancel the stamp by perforation or in such other manner as the Lieutenant-Governor in Council may direct. R.S.O. 1937, c. 27, s. 12.

Supply and
account of
stamps.

13. The Treasurer shall procure the stamps required under this Act, and shall keep an account of the numbers, denominations and amounts thereof, and of the dates at which they are procured. R.S.O. 1937, c. 27, s. 13.

Issue of
stamps, etc.

14. The Treasurer, upon payment to him of the proper amount, shall issue such stamps as may be required, and shall keep an account of the numbers, denominations and amounts thereof, and of the dates of issue. R.S.O. 1937, c. 27, s. 14.

15. Subject to the provisions hereinafter contained, the Treasurer may allow to any person who takes at any one time stamps to the amount of \$5 or upwards, a discount not exceeding five per cent. R.S.O. 1937, c. 27, s. 15. Allowance to be made to purchasers.

16. The Lieutenant-Governor in Council may make arrangements with any person for the exclusive sale of stamps to him in any locality, and for such time as he may think fit, at a discount, not exceeding five per cent, and in such case the Treasurer shall not issue stamps to any other person in the locality specified in the Order in Council. R.S.O. 1937, c. 27, s. 16. Appointment of vendor of stamps in any locality..

17. Where an arrangement under section 16 is made with any person for the sale of stamps, he shall at all times keep on hand such a supply of the different denominations as may be reasonably expected to be required of him, and shall sell the same to all persons upon payment of the amount of such stamps; and for any violation of this section he shall be liable to a penalty of not more than \$20, and shall also be liable for the damages sustained by any person through such violation. R.S.O. 1937, c. 27, s. 17. Obligations of vendors of stamps.

18. The Lieutenant-Governor in Council may make regulations for an allowance for stamps spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or by inadvertence may have been improperly or unnecessarily used, and such allowance shall be made either by giving other stamps in lieu of the stamps allowed for, or by repaying the amount thereof, after deducting the discount, if any, allowed on the sale of stamps to the like amount. R.S.O. 1937, c. 27, s. 18. Allowance for stamps spoiled or returned.

19. Every person who wilfully issues, receives, procures or delivers, or serves or executes any writ, rule, order, paper or proceeding upon which any fee is payable to the Crown without the same having been first duly stamped, shall be liable to a penalty for the first offence of not more than \$10, for the second offence of not more than \$50, and for the third and every subsequent offence \$200, and in default of payment shall be liable to be imprisoned for a term of not more than one month for the first offence, three months for the second offence, and one year for the third or any subsequent offence, unless in each case the penalty and costs are sooner paid. R.S.O. 1937, c. 27, s. 19. Penalty for issuing, etc., any writ or proceeding without having it duly stamped.

20. Every person who omits to cancel any stamp in the manner and at the time hereinbefore provided shall be liable to a penalty of not more than \$20. R.S.O. 1937, c. 27, s. 20. Penalty for not properly cancelling stamps.

Prima facie
evidence of
non-
stamping.

21. The production of any writ, rule, order, paper or proceeding not stamped, or insufficiently stamped, or the stamp of which is not properly cancelled, or the proof that it was not stamped or was not sufficiently stamped at the time when it was issued, received, served or executed, or that the stamp was not properly cancelled, shall be sufficient *prima facie* evidence of such writ, rule, order, paper or proceeding having been wilfully issued, received, served or executed without having been first stamped, or without the stamp having been properly cancelled. R.S.O. 1937, c. 27, s. 21.

Regulations
re fees
payable to
Crown.

22. Notwithstanding anything in any other Act, the Lieutenant-Governor in Council may make rules and regulations from time to time regulating and fixing all fees payable to the Crown in respect of proceedings in any court. R.S.O. 1937, c. 27, s. 22.

CHAPTER 202

The Legislative Assembly Act

1. The Assembly shall be composed of so many members as is fixed from time to time by *The Representation Act*. R.S.O. 1937, c. 12, s. 1. Assembly, how composed. Rev. Stat., c. 340.

2.—(1) The Legislature shall not determine or be dissolved by the demise of the Crown, but shall continue, and may meet, convene and sit, proceed and act, in the same manner as if such demise had not happened. Demise of the Crown.

(2) Nothing in this section shall alter or abridge the power of the Crown to prorogue or dissolve the Legislature. R.S.O. 1937, c. 12, s. 2. Power to prorogue or dissolve not affected.

3. Every Legislature shall continue for five years from the fifty-fifth day after the date of the writs for the election and no longer, subject to being sooner dissolved by the Lieutenant-Governor. R.S.O. 1937, c. 12, s. 3. Duration of Legislature.

4. There shall be a session of the Legislature once at least in every year, so that 12 months do not intervene between the last sitting of the Legislature in one session and its first sitting in the next. R.S.O. 1937, c. 12, s. 4. Yearly session.

5. It shall not be necessary for the Lieutenant-Governor in proroguing the Legislature to name any day to which it is prorogued, nor to issue a formal proclamation for a meeting of the Legislature when it is not intended that the Legislature shall meet for despatch of business. R.S.O. 1937, c. 12, s. 5. Prorogation of Legislature.

QUALIFICATION OF MEMBERS, ETC.

6.—(1) Subject to subsection 2, the persons qualified to sit and vote as members of the Assembly shall be any male or female persons of the full age of 21 years who are British subjects by birth or by naturalization under the laws of Canada from time to time in force, resident in Ontario and not disqualified by this or any other Act from election to the Assembly. Qualification of members of Assembly.

When
women to
be deemed
British
subjects.

(2) For the purposes of this Act a female person shall be deemed to be a British subject,

- (a) if she was born a British subject and is unmarried, or is married to a British subject and has not become a subject of a foreign power; or
- (b) if she has herself been personally naturalized as a British subject and has not since become the subject of a foreign power; or
- (c) if she has become a British subject by marriage or by the naturalization as a British subject of her parent while she was a minor, and in either case has done nothing to forfeit or lose her status as a British subject, and has obtained a certificate under the signature of a judge of the Supreme Court or of a county or district court, and the seal of the court, certifying that she is of the full age of 21 years, has resided in Canada a sufficient length of time and is possessed of all requirements necessary to entitle her, if unmarried, to become naturalized as a British subject, and that she has taken the oath of allegiance to His Majesty. R.S.O. 1937, c. 12, s. 6.

Senators and
members of
House of
Commons
disqualified.

7.—(1) No person who on the day of nomination for election to the Assembly is a member of the Senate of Canada or of the House of Commons of Canada shall be eligible as a member of the Assembly or be returned as elected thereto, and if any such person receives a majority of votes at an election the votes cast for him shall be thrown away and the returning officer shall return the person having the next greatest number of votes if he is otherwise eligible. R.S.O. 1937, c. 12, s. 7.

Vacation
of seat.

(2) If a member of the Assembly is elected and returned to the House of Commons of Canada or is appointed to the Senate of Canada, his seat in the Assembly shall thereupon be vacated and a writ shall issue forthwith for a new election to fill the vacancy. R.S.O. 1937, c. 12, s. 8.

Disqualifica-
tion of
persons
holding
office under
Crown.

8.—(1) Except as hereinafter specially provided, no person accepting or holding any office, commission or employment in the service of the Government of Canada, or of the Government of Ontario at the nomination of the Crown or at the nomination of any of the officers of the Government of Canada or of the Government of Ontario to which any salary, fee, wage, allowance, emolument or profit of any kind is attached shall be eligible as a member of the Assembly, or shall sit or vote therein. R.S.O. 1937, c. 12, s. 9 (1).

(2) Nothing in this section shall render ineligible as afore-^{Exceptions.} said or disqualify from sitting and voting in the Assembly when not otherwise disqualified,

(a) a member of the Executive Council;

(b) an officer or other member of His Majesty's navy, army or air force, or an officer in the militia or a militiaman;

(c) a justice of the peace, coroner, notary public or public school inspector;

(d) any person holding any temporary employment in the service of the Government of Canada requiring special qualifications or professional skill, or a commissioner appointed under *The Inquiries Act* (Canada);

R.S.C. 1927,
c. 99.

(e) a member of any commission, committee or other body appointed under any Act of the Legislature and declared by such Act to be entitled to any remuneration or allowance while a member of the Assembly. R.S.O. 1937, c. 12, s. 9 (2); 1939 (2nd Sess.), c. 11, s. 4 (1).

9. No person holding or enjoying, undertaking or executing, directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, any contract or agreement with His Majesty, or with any public officer or department, with respect to the public service of Ontario, or under which any public money of Ontario is to be paid for any service, work, matter or thing, shall be eligible as a member of or sit or vote in the Assembly. ^{Disqualification of public contractors.} R.S.O. 1937, c. 12, s. 10.

10.—(1) No person shall be ineligible as a member of the ^{Exceptions,} Assembly,

(a) by reason of his being interested as an executor, administrator or trustee only, having otherwise no beneficial interest in any such contract or agreement; ^{trustees for estates of contractors;}

(b) by reason of his being a shareholder or stockholder in an incorporated company having any such contract or agreement, unless such contract or agreement is for the building of a public work of Ontario, and such building or work has not been let by tender to the lowest bidder; ^{shareholders in contracting companies;}

(c) by reason of his being a contractor for the loan of money or for securities for the payment of money to the Government of Ontario under the authority of the Legislature after public competition or respect- ^{lenders of money to Government;}

ing the purchase or payment of the public stock or debentures of Ontario on terms common to all persons;

holders of
mining
licences, etc.;

- (d) by reason of his being the holder of a mining licence or having a contract or agreement with His Majesty or with any public officer or department with respect to the same or to mines or mining rights, but no such person shall vote on any question affecting such licence, contract or agreement or in which he is interested by reason thereof;

owners and
persons
interested
in certain
newspapers;

- (e) by reason of his being proprietor of or otherwise interested in a newspaper or other periodical publication in which official advertisements are inserted which appear in other newspapers or publications in Ontario, or which is subscribed for by the Government of Ontario, or any department thereof, or by any of the public institutions of Ontario, unless such advertisements or subscriptions are paid for out of the public moneys of Ontario at rates greater than usual rates;

timber
licensees;

- (f) by reason of his holding a licence, permit or permission for cutting timber, or being interested in any such licence, permit or permission, directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, or by reason of there being money due or payable to His Majesty in respect of timber cut, but no such person shall vote on any question affecting such licence, permit or permission, or in which he is interested by reason thereof;

fishery
licensees;

- (g) by reason of his being the holder of a fishery licence, or having a contract or agreement with His Majesty or with any public officer or department with respect to the same or to fisheries or fishing rights, but no such person shall vote on any question affecting such licence, contract or agreement, or in which he is interested by reason thereof;

certain
sureties or
obligors;

- (h) by reason of his being a surety or contractor or liable for the payment of money for or on account of the maintenance or tuition of an inmate or pupil of any Government institution;

certain post-
masters and
mail carriers;

- (i) by reason of his being a postmaster elsewhere than in a city, town or incorporated village, or interested in a contract for carrying the mail between two or more post offices neither of which is in a city, town or

1401 incorporated village or of his being the surety of any such postmaster or contractor;

(j) by reason of his receiving or having received or agreed to receive compensation in respect to any property taken or purchased by the Crown or by any department or commission of the Government of Ontario or with respect to any interest in such property where the amount of such compensation has been fixed by an award made under *The Public Works Act* or any other general or special Act of the Legislature, or has been agreed upon and the judge of the county or district court of the county or district in which the property is situate has certified in writing that the amount of compensation is fair and reasonable, but no such person shall vote on any question arising in the Assembly touching such matter; receipt of compensation for land not to disqualify; Rev. Stat., c. 323.

(k) by reason of his being a surety for a public officer or Ontario land surveyor or other person required by law to furnish security to the Crown. sureties of public officers.

(2) A person elected a member of the Assembly who is at the time of his election a surety as aforesaid shall, before he sits or votes therein, take and complete such action as may be requisite to relieve him from any thereafter accruing liability in respect of his suretyship, and no person who is liable as such surety in respect of any accruing matter shall sit or vote in the Assembly. R.S.O. 1937, c. 12, s. 11. Duty of sureties who have been elected.

11. No disqualification under section 8 or 9 on any ground arising between the election shall be held by any court to affect the seat of a member of the Assembly or to disentitle any person to sit or vote therein until the disqualification has been duly found and declared by an election court; but this is not to be construed as affecting the cases provided for by subsection 2 of section 10, nor as affecting the right of the Assembly to expel a member according to the practice of Parliament or otherwise. R.S.O. 1937, c. 12, s. 12. When disqualification to become operative.

12. If a person who is disqualified or ineligible or incapable of being elected a member of the Assembly is nevertheless elected and returned, his election and return shall be null and void. R.S.O. 1937, c. 12, s. 13. Effect of election of disqualified person.

13. Notwithstanding anything in any Act, where a member of the Assembly is appointed a member of the Executive Council, he shall not, by reason of the acceptance of such appointment, vacate his seat or be disqualified from sitting Member not disqualified on appointment to Executive Council.

or voting in the Assembly. R.S.O. 1937, c. 12, s. 14; 1941, c. 26, s. 1.

Disqualifica-
tion
through
acceptance
of office.

14.—(1) If a member of the Assembly by accepting any office or becoming a party to a contract or agreement as in sections 8 and 9 mentioned, is disqualified by law to continue to sit or vote in the Assembly, his seat shall be vacated; but he may be re-elected if he is not declared ineligible under this Act. R.S.O. 1937, c. 12, s. 15 (1); 1941, c. 26, s. 2 (1).

Saving in
case of,
exchange of
offices in
Executive
Council;

(2) Nevertheless, whenever any person holding the office of President of the Council, Attorney-General, Secretary and Registrar of Ontario, Treasurer of Ontario, Minister of Agriculture, Minister of Education, Minister of Health, Minister of Highways, Minister of Labour, Minister of Lands and Forests, Minister of Mines, Minister of Municipal Affairs, Minister of Planning and Development, Minister of Public Welfare, Minister of Public Works, Minister of Reform Institutions or Minister of Travel and Publicity and being at the same time a member of the Assembly resigns his office and accepts any other of the said offices, he shall not thereby vacate his seat in the Assembly.

additional
offices in
Executive
Council.

(3) Where a member of the Executive Council holding any one of the offices mentioned in subsection 2 is appointed to hold another office in addition to or in connection with such first-mentioned office, he shall not thereby vacate his seat, and any increase or change of emolument arising from the holding of such two offices shall not cause a vacancy or render a re-election necessary. 1947, c. 55, s. 1.

Penalty
upon
disqualified
person
sitting
or voting.

15.—(1) Subject to section 11, a person ineligible as a member of or disqualified from sitting or voting in the Assembly who sits or votes therein while he is so ineligible or disqualified, shall forfeit the sum of \$2,000 for every day on which he so sits or votes, and the sum may be recovered from him by any person who sues for the same in any court of competent jurisdiction.

Idem.

(2) If any action is brought and judgment is recovered against the defendant, no other action shall be brought or proceeding taken against the same person for any offence under this section committed before notice to him of the recovery of the judgment.

Staying
proceedings
in other
actions.

(3) The court wherein any other action is brought contrary to the intent and meaning of this Act, may upon the defendant's motion, stay the proceedings therein, if the first-mentioned action be prosecuted without fraud and with effect, but no action shall be deemed an action within this section unless so prosecuted. R.S.O. 1937, c. 12, s. 16.

OATH OF MEMBERS

16. Before a member elect is permitted to take the oath of allegiance required by the *British North America Act*, he shall file with the Clerk of the Assembly, an affidavit (Form I). R.S.O. 1937, c. 12, s. 17.

Affidavit to be filed before oath taken.

DISCLAIMER

17.—(1) A member elect may at any time before his election is complained of disclaim his seat in the manner hereinafter provided, and he shall thereby vacate the seat, and cease to be a member in respect of the seat so disclaimed. R.S.O. 1937, c. 12, s. 18.

Disclaimer by member elect.

(2) A member elect who desires to disclaim may transmit by prepaid registered mail addressed to the Clerk of the Legislative Assembly, Toronto, or cause to be delivered to the Clerk of the Assembly, a disclaimer signed by the member in the presence of two subscribing witnesses to the following effect:

Mode of disclaiming.

I, *A.B.*, member elect to the Legislative Assembly for the electoral district of....., hereby disclaim all my right or title to sit or vote or in any manner to act as such member.

Form of disclaimer.

R.S.O. 1937, c. 12, s. 19.

(3) The Clerk of the Assembly shall, on receiving a disclaimer, forthwith send a copy thereof,

Transmission of copy of disclaimer,

(a) in the case of an election which has taken place in the County of York or the City of Toronto, to the Registrar of the Supreme Court at Toronto;

in County of York or Toronto;

(b) in the case of an election which has taken place elsewhere, to the local registrar for the county or provisional judicial district in which the electoral district for which the member so disclaiming or any part thereof is situate, was elected. R.S.O. 1937, c. 12, s. 20.

in other places.

(4) A petitioner has notice of the filing of a disclaimer and in which the election is complained of on any ground other than of corrupt practices committed by the member elect or of corrupt practices having extensively prevailed at the election and in which the seat is not claimed for the petitioner or some other person, may be dismissed by a judge of the Court of Appeal on notice to the petitioner and on proof by affidavit that such disclaimer has been given in the prescribed manner. R.S.O. 1937, c. 12, s. 21.

Dismissal of petition where disclaimer filed.

Issuing writ
when no
petition filed
after
disclaimer.

Rev. Stat.,
c. 67.

(5) If no petition is filed within the time limited for that purpose by *The Controverted Elections Act*, or if the petition is dismissed, the Lieutenant-Governor in Council may direct the issue of a new writ for the election of a member in the place of the member disclaiming. R.S.O. 1937, c. 12, s. 22.

RESIGNATION

Resignation
before
meeting of
Legislature.

18. If a person returned as elected for one or more electoral districts at a general election wishes to resign his seat, or one of his seats, before the first session of the Legislature thereafter, he may address and cause to be delivered to any two members elect of the Assembly a declaration that he resigns his seat, made in writing under his hand before two subscribing witnesses, and the two members upon receiving the declaration shall forthwith address their warrant under their hands and seals to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member for the electoral district in the place of the member so resigning, and the writ shall issue accordingly. R.S.O. 1937, c. 12, s. 23.

In other
cases.

19.—(1) A member may also resign his seat,

- (a) by giving in his place in the Assembly notice of his intention to resign it, which notice shall be entered immediately by the Clerk of the Assembly upon the Journals of the Assembly; or
- (b) by addressing and causing to be delivered to the Speaker a declaration that he resigns his seat, made in writing under his hand before two subscribing witnesses, which declaration may be so made and delivered either during a session of the Legislature or in the interval between two sessions.

Record.

(2) An entry of the declaration so delivered to the Speaker shall thereafter be made upon the Journals of the Assembly.

New writ.

(3) Immediately after the notice of intention to resign has been entered upon the Journals, or after the receipt of the declaration, as the case may be, the Speaker shall address his warrant under his hand and seal to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member in the place of the member so resigning, and in either case a writ shall issue accordingly. R.S.O. 1937, c. 12, s. 24.

Where
there is no
Speaker, or
the member
is himself
the Speaker.

20. If a member wishes to resign his seat in the interval between two sessions of the Legislature, and there is then no Speaker, or the Speaker is absent from Ontario, or if the member is himself the Speaker, he may address and cause

to be delivered to two members the declaration before mentioned, and the two members upon receiving the declaration shall forthwith address their warrant under their hands and seals to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member in the place of the member so resigning, and the writ shall issue accordingly. R.S.O. 1937, c. 12, s. 25.

21.—(1) A member or member elect tendering his resignation in any manner hereinbefore provided for shall be deemed to have vacated his seat and to have ceased to be a member of the Assembly in respect thereof. Consequences of resignation.

(2) A member or member elect shall not tender his resignation while his election is controverted, nor until after the expiration of the time within which an election petition may be filed. R.S.O. 1937, c. 12, s. 26. Time for resignation.

22.—(1) Forthwith after the receipt by the Speaker, or if there is no Speaker, or the Speaker is absent from Ontario, by the Clerk of the Assembly, of a certificate under *The Controverted Elections Act* that an election was void, the Speaker or the Clerk of the Assembly, as the case may be, shall address his warrant under his hand and seal to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member for the electoral district, the election for which has been certified to be void, and the writ shall issue accordingly. R.S.O. 1937, c. 12, s. 27. Issue of writ for new election, when election declared void. Rev. Stat., c. 67.

(2) The Speaker shall forthwith after the receipt of the certificate, communicate the same to the Clerk of the Assembly. R.S.O. 1937, c. 12, s. 28. Notification.

23. The proceedings taken under sections 18 to 22 by the Speaker or Clerk of the Assembly shall be reported to the Assembly at the earliest practicable time, and shall be forthwith entered upon the Journals. R.S.O. 1937, c. 12, s. 29. Report to Assembly.

24.—(1) If a person returned as elected appears by the certificate mentioned in section 22 not to have been duly returned or elected, he shall not thereafter unless re-elected sit or vote in the Assembly. Disqualification of persons declared not elected.

(2) If a person, other than the person returned as elected, appears by the certificate to have been duly returned or elected, he shall thereupon be entitled to sit and vote in the Assembly. R.S.O. 1937, c. 12, s. 30. Rights of persons declared elected.

Writ not to issue during session.

25. No writ shall issue under any of the provisions of sections 18 to 24 during a session of the Legislature. R.S.O. 1937, c. 12, s. 31.

VACANCIES

Proceedings in case of vacancy by death or acceptance of office.

26.—(1) If a vacancy happens in the Assembly by the death of a member, or by his accepting an office, commission or employment, or by his becoming a party to a contract as mentioned in section 9, unless otherwise provided by this Act, the Speaker, on being informed of the vacancy by a member of the Assembly in his place, or by notice in writing under the hands and seals of two members, shall forthwith address his warrant to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member to fill the vacancy, and a writ shall issue accordingly.

Proceedings when Speaker is absent from Ontario, or there is no Speaker.

(2) If any such vacancy happens, or at any time thereafter, before the warrant for the writ has issued, there is no Speaker, or the Speaker is absent from Ontario, or if the member whose seat is vacated is himself the Speaker, then two members may address their warrant under their hands and seals to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member to fill the vacancy, and the writ shall issue accordingly. R.S.O. 1937, c. 12, s. 32.

Filling a vacancy before Legislature meets after a general election.

27.—(1) A warrant may issue under the hands and seals of two members elect to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member to fill a vacancy arising subsequently to a general election and before the first session of the Legislature thereafter, by reason of any of the causes mentioned in section 26, and the writ may issue at any time after such vacancy.

Election being contested not affected.

(2) The election to be held under the writ shall not affect the right of any person entitled to contest the previous election; and the election court shall determine whether the member who has died or whose seat has become vacant as aforesaid, or any other person, was duly returned or elected, which determination, if adverse to the return of such member and in favour of any other candidate, shall avoid the election held under this section, and the candidate declared duly elected at the previous election shall be entitled to take his seat as if no subsequent election had been held. R.S.O. 1937, c. 12, s. 33.

Where vacancy exists for three months.

28. Subject to section 25, if the seat of a member of the Assembly has been vacant for three months and no writ has been issued, the Clerk of the Crown in Chancery shall issue the writ forthwith. R.S.O. 1937, c. 12, s. 34.

THE SPEAKER

29.—(1) The Assembly at its first meeting after a general election shall proceed to elect one of its members to be Speaker. Election of Speaker.
R.S.O. 1937, c. 12, s. 35.

(2) In case of a vacancy happening in the office of Speaker, the Assembly shall proceed to elect another of its members to be Speaker. Vacancy in office of Speaker.
R.S.O. 1937, c. 12, s. 36.

30. The Speaker shall preside at all meetings of the Assembly. Duty to preside.
R.S.O. 1937, c. 12, s. 38.

31. When the Speaker finds it necessary to leave the chair during any part of the sittings on any day, he may call upon any member to take the chair and to act as speaker during the remainder of the day unless the Speaker himself resumes the chair before the close of the sittings for that day. Illness, etc., of the Speaker.
R.S.O. 1937, c. 12, s. 39.

32. When the Speaker is not present at the meeting of the Assembly on any day, the Assembly may elect a member to take the chair and act as speaker for that day. Election of Speaker for the day.
R.S.O. 1937, c. 12, s. 40.

33. If the Speaker is absent from the chair for a period of 48 consecutive hours, the Assembly may elect another of its members to act as speaker, and the member so elected shall during the continuance of the absence of the Speaker have and execute all the powers, privileges and duties of the Speaker. Election of Speaker pro tem.
R.S.O. 1937, c. 12, s. 41.

34. Every bill passed and every order made and thing done by the Assembly while any member is acting as speaker, shall be as valid and effectual as if done while the Speaker himself was in the chair. Validity of acts while acting Speaker presides.
R.S.O. 1937, c. 12, s. 42.

POWERS AND PRIVILEGES OF THE ASSEMBLY

35.—(1) The Assembly may at all times command and compel the attendance before the Assembly or a committee thereof, of such persons, and the production of such papers and things as the Assembly or committee may deem necessary for any of its proceedings or deliberations. Power to compel attendance of witnesses, etc.
R.S.O. 1937, c. 12, s. 43.

(2) When the Assembly requires the attendance of any person before the Assembly or a committee thereof, the Speaker may issue his warrant directed to the person named Speaker's warrant for attendance, etc.

in the order of the Assembly, requiring the attendance of such person before the Assembly or committee and the production of such papers and things as may be ordered. R.S.O. 1937, c. 12, s. 44.

Protection of persons acting under authority.

36. No person shall be liable in damages or otherwise for any act done under the authority of the Assembly and within its legal power or under or by virtue of a warrant issued under such authority, and every such warrant may command the aid and assistance of all sheriffs, bailiffs, constables, and others, and every refusal or failure to give such aid or assistance when required shall be a contravention of this Act. R.S.O. 1937, c. 12, s. 45.

Privilege of speech, etc.

37. A member of the Assembly shall not be liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a committee thereof. R.S.O. 1937, c. 12, s. 46.

Freedom from arrest.

38. Except for a contravention of this Act, a member of the Assembly shall not be liable to arrest, detention or molestation for any cause or matter whatever of a civil nature during a session of the Legislature and during the 20 days preceding and the 20 days following the session. R.S.O. 1937, c. 12, s. 47.

Exemption of members and officers from serving as jurors.

39. During the periods mentioned in section 38, members, officers and employees of the Assembly, and witnesses summoned to attend before the Assembly or a committee thereof, shall be exempt from serving or attending as jurors in any court of justice in Ontario. R.S.O. 1937, c. 12, s. 48.

Members not to receive fees for drafting bills, etc.

40. No member of the Assembly shall knowingly accept or receive, either directly or indirectly, any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted or intended to be submitted to the Assembly or a committee thereof. R.S.O. 1937, c. 12, s. 49.

Barristers, etc., being partners of members not to receive fees for drafting bills, etc.

41. No barrister or solicitor who in the practise of his profession is a partner of a member of the Assembly shall knowingly accept or receive, directly or indirectly, any fee, compensation or reward for or in respect of any matter or thing mentioned in section 40. R.S.O. 1937, c. 12, s. 50.

Penalty.

42. Every person violating any of the provisions of sections 40 and 41 shall be liable to a penalty equal to the

amount or value of the fee, compensation or reward accepted or received by him and the sum of \$500. R.S.O. 1937, c. 12, s. 51.

43. Any violation of section 40 shall be a corrupt practice, and an election petition setting up the violation may be filed within six months after the offence in the same manner, and the proceedings thereupon shall be the same as in the case of other election petitions. R.S.O. 1937, c. 12, s. 52.

Breach of
s. 40 to be
a corrupt
practice.

44. If judgment is recovered against a member of the Assembly for any penalty under section 42, or if by a resolution of the Assembly it is declared that a member thereof has been guilty of a violation of section 40, or if upon an election petition it is found that a member has been guilty of a violation of section 40, his election shall become void and his seat shall be vacated, and a writ shall issue for a new election as if he were dead and he shall be incapable of being elected to or of sitting in the Assembly during the remainder of the term for which he was elected. R.S.O. 1937, c. 12, s. 53.

Vacation
of seat.

45.—(1) The Assembly shall have all the rights and privileges of a court of record for the purposes of summarily inquiring into and punishing, as breaches of privilege or as contempts and without affecting the liability of the offenders to prosecution and punishment criminally or otherwise according to law, independently of this Act, the acts, matters and things following:

Jurisdiction
of Assembly.

1. Assault, insult or libel upon a member of the Assembly during the session of the Legislature and 20 days before and after the same. Assaults,
insults, libels.
2. Obstructing, threatening or attempting to force or intimidate a member of the Assembly. Threats.
3. Offering to, or the acceptance by, a member of the Assembly of a bribe to influence him in his proceedings as such, or offering to or the acceptance by a member of any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted to or intended to be submitted to the Assembly or a committee thereof. Bribery and
offering
of fee.
4. Assault upon or interference with an officer of the Assembly while in the execution of his duty. Interference
with officers.
5. Tampering with a witness in regard to evidence to be given by him before the Assembly or a committee thereof. Tampering
with witness.

- | | |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| False evidence. | 6. Giving false evidence or prevaricating or misbehaving in giving evidence or refusing to give evidence or to produce papers before the Assembly or a committee thereof. |
| Disobedience to subpoena. | 7. Disobedience to a warrant requiring the attendance of a witness before the Assembly or a committee thereof, or refusal or neglect to obey a warrant mentioned in section 36. |
| Presenting false documents. | 8. Presenting to the Assembly or to a committee thereof a forged or false document with intent to deceive the Assembly or committee. |
| Falsifying records, etc. | 9. Forging, falsifying or unlawfully altering a record of the Assembly or of a committee thereof, or any document or petition presented or filed or intended to be presented or filed before the Assembly or committee, or the setting or subscribing by any person of the name of another person to any such document or petition with intent to deceive. |
| Taking civil proceedings against member. | 10. Taking any civil proceeding against, or causing or effecting the arrest or imprisonment of a member of the Assembly in any civil proceeding, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a committee thereof. |
| Arresting member for debt, etc. | 11. Causing or effecting the arrest, detention, or molestation of a member of the Assembly for any cause or matter of a civil nature during a session of the Legislature and during the 20 days following and the 20 days preceding the session. |
- Jurisdiction given as to inquiring and punishing.
- (2) For the purposes of this Act, the Assembly shall possess all the powers and jurisdiction necessary or expedient for inquiring into, adjudging and pronouncing upon the commission or doing of the acts, matters or things mentioned in subsection 1 and for awarding and carrying into execution the punishment thereof. R.S.O. 1937, c. 12, s. 54.
- Punishment for contravention of s. 45.
- 46.** Every person who, upon such inquiry, is found to have committed or done any of the acts, matters, or things mentioned in section 45, in addition to any other penalty or punishment to which he may by law be subject, shall be liable to imprisonment for such time during the session of the Legislature then being held as may be determined by the Assembly. R.S.O. 1937, c. 12, s. 55.

47.—(1) Where the Assembly declares that a person has been guilty of a breach of privilege or of a contempt in respect of any of the acts, matters and things mentioned in section 45 and directs that the person be kept and detained in the custody of the sergeant-at-arms attending the Assembly, the Speaker shall issue his warrant to the sergeant-at-arms to take the person into custody and to keep and detain him in custody in accordance with the order of the Assembly.

Proceeding on contravention of s. 45 and arrest thereunder.

(2) Where the Assembly directs that the imprisonment shall be in the common jail in the county of York, the Speaker shall issue his warrant to the sergeant-at-arms and to the governor or keeper of such common jail commanding the sergeant-at-arms to take such person into custody and to deliver him to the governor or keeper of such common jail, and commanding the governor or keeper of the common jail to receive and keep and detain him in custody in accordance with the order of the Assembly. R.S.O. 1937, c. 12, s. 56.

Warrant of committal.

48. The determination of the Assembly upon any proceeding under this Act shall be final and conclusive. R.S.O. 1937, c. 12, s. 57.

Decision of Assembly to be final.

49.—(1) Any person who is a defendant in any civil proceeding commenced in any manner for or in respect of the publication of any report, paper, vote or proceeding by such person or by his servant, by or under the authority of the Assembly may bring before the court in which the proceeding is pending (first giving 24 hours notice of his intention so to do to the plaintiff or his solicitor), a certificate under the hand of the Speaker or of the Clerk of the Assembly, stating that the report, paper, vote or proceeding in respect whereof the proceeding has been commenced was published by such person or by his servant by order or under the authority of the Assembly together with an affidavit verifying the certificate.

Protection of persons publishing papers by order of Assembly.

(2) The court shall thereupon immediately stay the proceeding and it and every writ or process issued therein shall be taken to be finally put an end to, determined and superseded. R.S.O. 1937, c. 12, s. 58.

Stay of proceedings.

50.—(1) If a civil proceeding is commenced for or in respect of the publication of any copy of such report, paper, vote or proceeding, the defendant at any stage of the proceeding may lay before the court the report, paper, vote or proceeding and the copy with an affidavit verifying the report, paper, vote or proceeding and the correctness of the copy.

Production of papers to court.

Stay of
proceedings.

(2) The court shall thereupon immediately stay the proceeding and it and every writ or process issued therein shall be taken to be finally put an end to, determined and superseded. R.S.O. 1937, c. 12, s. 59.

Bona fide
publication.

51. It shall be a good defence to any civil proceeding against a person for printing any extract from or abstract of any such report, paper, vote or proceeding, that the extract or abstract was published *bona fide* and without malice. R.S.O. 1937, c. 12, s. 60.

Saving of
privileges
inherent in
Assembly or
members.

52. Except so far as is provided by section 40, nothing in this Act shall be construed to deprive the Assembly, or a committee or member thereof, of any right, immunity, privilege or power which the Assembly, committee or member might otherwise have been entitled to exercise or enjoy. R.S.O. 1937, c. 12, s. 61.

PURCHASE AND DISTRIBUTION OF PUBLICATIONS

Payment for
books
ordered by
Printing
Committee.

53. Where the Assembly has adopted the report of the Printing Committee of the Assembly recommending the purchase of any publication for the use of the members of the Assembly or for other persons, the publication may be purchased by the Treasurer of Ontario and distributed according to the recommendations of the report, and the cost thereof shall be paid out of any sum appropriated by the Legislature for stationery, printing and binding. R.S.O. 1937, c. 12, s. 63.

QUORUM AND MANNER OF VOTING

Quorum.

54. At least 20 members of the Assembly shall be necessary to constitute a quorum for the transaction of business; and for that purpose the Speaker shall be counted. R.S.O. 1937, c. 12, s. 64.

Voting.

55. Questions arising in the Assembly shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal the Speaker shall have a vote. R.S.O. 1937, c. 12, s. 65.

MONEY VOTES

Condition
precedent to
appropriations.

56. The Assembly shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the Consolidated Revenue Fund, or of any tax or impost, to any purpose which has not been first recommended by a

message of the Lieutenant-Governor to the Assembly during the session in which the vote, resolution, address or bill is proposed. R.S.O. 1937, c. 12, s. 66; 1937, c. 37, s. 4.

ESTATE BILLS

57. The judges of the Supreme Court shall be *ex officio* Commissioners to examine bills. commissioners to report under the Rules of the Assembly in respect of estate bills. R.S.O. 1937, c. 12, s. 67.

OATHS TO WITNESSES

58. Any standing or special committee of the Assembly may require that facts, matters and things relating to the subject of inquiry be verified or otherwise ascertained by the oral examination of witnesses, and may examine witnesses upon oath, and for that purpose the chairman or any member of the committee may administer the oath (Form 2). R.S.O. 1937, c. 12, s. 68. Power of committees to examine on oath.

59. Where witnesses are not required to be examined orally, an affirmation, declaration or affidavit, which is required to be made or taken by or according to any rule or order of the Assembly, or by the direction of any committee, and in respect of any matter or thing pending or proceeding before the committee, may be made and taken before the Clerk of the Assembly, the clerk of the committee, a commissioner for taking affidavits or a justice of the peace. R.S.O. 1937, c. 12, s. 69. Affidavits.

INDEMNITY TO MEMBERS

60.—(1) Every member of the Assembly shall be paid, Members' indemnities and allowances, amounts;

(a) an indemnity at the rate of \$2,000 per annum; and

(b) an allowance for expenses at the rate of \$1,000 per annum.

(2) For the purpose of computing the amount of any indemnity or allowance payable under this section, a member shall be deemed to be a member from the polling day on which he is elected, and when the Legislature of which he is a member is dissolved he shall be deemed to be a member until the day preceding the polling day that follows the dissolution, or until his death, whichever occurs first. computation:

(3) Every indemnity and allowance under this section shall be paid on the 31st day of March in each year, but when a member resigns or dies or for any other reason ceases to be a member the amounts that are payable to him for the period then concluded shall be paid forthwith. when paid;

advances.

(4) Notwithstanding subsection 3, each member upon his request shall be paid by way of advance any part of the amount, not exceeding \$60 per month in respect of his indemnity and \$30 per month in respect of his allowance, that has accrued at the time the request is made. 1949, c. 50, s. 1, *part*.

Speaker's
and Leader
of the Oppo-
sition's
indemnities
and allow-
ances,
amount;

61.—(1) In addition to his indemnity and allowance for expenses as a member, there shall be paid,

- (a) to the Speaker, an indemnity at the rate of \$2,500 per annum; and
- (b) to the Leader of the Opposition,
 - (i) an indemnity at the rate of \$3,000 per annum, and
 - (ii) an allowance for expenses at the rate of \$2,000 per annum.

computa-
tion;

(2) For the purpose of computing the amount of any indemnity or allowance payable under this section, the Speaker and the Leader of the Opposition, respectively, shall be deemed to occupy the position from the polling day on which he is elected a member of the Assembly, and when the Legislature in which he occupies the position is dissolved he shall be deemed to occupy the position until the day preceding the polling day that follows the dissolution, or until his death, whichever occurs first; provided that when the occupant of the position changes, the member succeeding to the position shall be deemed to occupy the position from the day following that on which his predecessor ceased to occupy the position.

when paid;

(3) Every indemnity and allowance under this section shall be paid on the 31st day of March in each year, but when the Speaker or the Leader of the Opposition, as the case may be, ceases to occupy the position the amounts that are payable to him for the period then concluded shall be paid forthwith.

advances.

(4) Notwithstanding subsection 3, the Speaker or the Leader of the Opposition upon his request shall be paid by way of advance any part of the amount, not exceeding in the case of the Speaker, \$70 per month in respect of his indemnity, and in the case of the Leader of the Opposition, \$80 per month in respect of his indemnity and \$60 per month in respect of his allowance, that has accrued at the time the request is made. 1949, c. 50, s. 1, *part*.

Chairman of
the Com-
mittees of
the Whole
House,
indemnity;

62.—(1) In addition to his indemnity as a member, the Chairman of the Committees of the Whole House shall be paid an indemnity of \$1,000 for each session.

(2) The indemnity under this section shall be paid at the close of the session, and if in any session more than one person occupied the position the indemnity shall be divided among them in proportion to the time that each occupied the position during the session. 1949, c. 50, s. 1, *part*.

63. There shall be paid to each member of a committee of the Assembly an allowance for expenses of \$20 in respect of every day during the interval between sessions of the Assembly, Allowance for attending committee meetings.

- (a) upon which he attends a meeting of the committee; or
- (b) upon which he is absent from home engaged on the work of the committee, other than days spent travelling to and from meetings of the committee. 1947, c. 55, s. 2, *part*.

64. There shall also be allowed to every member,

- (a) in respect of each session of the Assembly; and
- (b) in respect of each series of meetings of a committee of the Assembly held between sessions of the Assembly and which he attends as a member of the committee,

Mileage allowance in respect of meetings of committees.

10 cents for every mile of the distance between his place of residence and Toronto reckoning the distance going and coming according to the shortest mail route, which distance shall be determined and certified by the Speaker. 1947, c. 55, s. 2, *part*.

FORM 1

(Section 16)

AFFIDAVIT OF MEMBER ELECT

I,, of the.....of.....
 in the County of....., elected to represent the Electoral
 District of.....(as the case may be), in the Legislative
 Assembly of the Province of Ontario, make oath and say: That, except
 in respect of my personal expenses, I have not made, before, during or
 since my election, any payment, advance, loan or deposit for the purposes
 of the election last held for the said electoral district otherwise than
 through my official agent appointed under *The Election Act*; and that
 I will not hereafter make any payment, loan or deposit in respect of
 the said election, except through my official agent appointed under the
 said Act. I further say that I have not been guilty of any corrupt practice
 in respect of my election.

Sworn before me, this.....

day of....., 19.....

Clerk of the Legislative Assembly.

R.S.O. 1937, c. 12, Form 1.

FORM 2

(Section 58)

OATH OF WITNESSES

The evidence you shall give to this Committee touching the subject
 of the present inquiry shall be the truth, the whole truth, and nothing
 but the truth. So help you God.

R.S.O. 1937, c. 12, Form 2.

CHAPTER 203

The Legitimation Act

1. If the parents of a child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth. R.S.O. 1937, c. 216, s. 1. Subsequent marriage of parents.

2. Notwithstanding section 1, a child born while its father was married to another woman or while its mother was married to another man shall not inherit in competition with the lawful children of either parent. R.S.O. 1937, c. 216, s. 2. Children born out of wedlock to married persons.

3. The parents and brothers and sisters of any child legitimized by this Act shall inherit upon his death as though he had been legitimate. R.S.O. 1937, c. 216, s. 3. Inheritance from legitimized child.

4. Nothing in this Act shall affect any right, title or interest in or to property if such right, title or interest has been vested in any person, Rights of property not prejudiced.

(a) prior to the 1st day of July, 1921; or

(b) in the case of marriage after the 1st day of July, 1921, prior to such marriage. R.S.O. 1937, c. 216, s. 4.

5. Where,

(a) a marriage has taken place in the *bona fide* belief of the death of a former spouse and under such circumstances that the crime of bigamy has not been committed; or Children of re-marriage while former spouse living.

(b) pursuant to section 11 of *The Marriage Act*, a judge has made an order of presumption of death and the spouse of the person who has been presumed to be dead again marries, Rev. Stat., c. 222.

if the person who is believed to be dead or in respect of whom an order of presumption of death has been made, as the case may be, was alive when such marriage was solemnized, unless the marriage is otherwise invalid, the issue conceived before knowledge of the fact that the former spouse is living,

- (c) shall for all purposes be deemed to be and to have been the legitimate children of the persons entering into such marriage from the time of birth; and
- (d) shall have the same rights, benefits and obligations under any law or statute in force in Ontario as they would have had if the person believed to be dead or in respect of whom the order of presumption of death was made, had in fact died before such marriage was solemnized. 1950, c. 36, s. 1.

Intestacy
of mother of
illegitimate
child.

6.—(1) Where the mother of an illegitimate child, such child not being legitimated by this Act, dies intestate as respects all or any of her real or personal property and does not leave any legitimate issue surviving her, the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

Intestacy of
illegitimate
child.

Rev. Stat.,
c. 7.

(2) Subject to subsection 8 of section 12 of *The Adoption Act*, where an illegitimate child, not being legitimated by this Act, dies intestate in respect of all or any of his real or personal property, his mother, if surviving, shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent. 1944, c. 32, s. 1.

CHAPTER 204

The Libel and Slander Act

- 1.** In this Act, "newspaper" means a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding 31 days between the publication of any two of such papers, parts or numbers, and includes a paper printed in order to be made public weekly or more often, or at intervals not exceeding 31 days, and containing only, or principally, advertisements. Interpretation. R.S.O. 1937, c. 113, s. 1.
- 2.** In an action for libel or slander the plaintiff may aver Averments. that the words or matter complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words or matter were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander, and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the statement of claim shall be sufficient. R.S.O. 1937, c. 113, s. 2.
- 3.** In an action for libel or slander where the defendant Apologies. has pleaded a denial of the alleged libel or slander only, or has suffered judgment by default, or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such libel or slander before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. R.S.O. 1937, c. 113, s. 3.
- 4.** On the trial of an action for libel the jury may give a Verdicts. general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff, merely on proof of publication by the defendant of the alleged libel, and of the sense ascribed to it in the action; but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases, and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict,

whether general or special, shall be the same as in other cases. R.S.O. 1937, c. 113, s. 4.

Consolidation of different actions for same libel.

5.—(1) The court, upon an application by two or more defendants in any two or more actions for the same or substantially the same libel, or for a libel or libels contained in articles the same or substantially the same published in different newspapers, brought by one and the same person, may make an order for the consolidation of such actions so that they will be tried together, and after such order has been made and before the trial of such actions, the defendants in any new actions instituted in respect of any such libel or libels shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Assessment of damages and apportionment of damages and costs.

(2) In a consolidated action under this section the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the jury find a verdict against the defendant or defendants in more than one of the actions so consolidated they shall apportion the amount of the damages between and against the last-mentioned defendants, and the judge at the trial, in the event of the plaintiff being awarded the costs of the action, shall thereupon make such order as he deems just for the apportionment of the costs between and against such defendants.

Interpretation.

(3) In this section, "article" includes anything appearing in a newspaper as an editorial or as correspondence or otherwise than as an advertisement. R.S.O. 1937, c. 113, s. 5.

Newspaper libel, plea in mitigation of damages.

6. In an action for libel contained in a newspaper the defendant may plead in mitigation of damages that the libel was inserted therein without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology for the libel, or if the newspaper in which the libel appeared is one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper to be selected by the plaintiff. R.S.O. 1937, c. 113, s. 6.

Notice of action.

7.—(1) No action for libel contained in a newspaper shall lie unless the plaintiff has, within six weeks after the publication thereof has come to his notice or knowledge, given to the defendant notice in writing, specifying the statement complained of, which shall be served in the same manner as a

statement of claim or by delivering the notice to a grown up person at the place of business of the defendant.

(2) The plaintiff shall recover only actual damages if it appears on the trial, When plaintiff to recover actual damages only.

(a) that the alleged libel was published in good faith;

(b) that there was reasonable ground to believe that the publication thereof was for the public benefit;

(c) that it did not involve a criminal charge;

(d) that the publication took place in mistake or misapprehension of the facts; and

(e) that a full and fair retraction of any statement therein alleged to be erroneous was published either in the next regular issue of the newspaper, or in any regular issue thereof published within three days after the receipt of such notice, and was so published in as conspicuous a place and type as was the alleged libel.

(3) This section shall not apply to the case of a libel against any candidate for public office in Ontario unless the retraction of the charge is made editorially in a conspicuous manner at least five days before the election. Case of candidate for public office. R.S.O. 1937, c. 113, s. 7.

8. A defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of any libel to which sections 6 and 7 apply, and, except so far as regards the additional facts hereinbefore required to be pleaded by a defendant, such payment shall have the same effect as payment into court in other cases. Payment into court. R.S.O. 1937, c. 113, s. 8.

9.—(1) A fair and accurate report published in a newspaper of any proceedings in the Senate or House of Commons of Canada, in any legislative assembly of any of the provinces of Canada, or in any committee of any of such bodies or of a public meeting, or, except where neither the public nor any newspaper reporter is admitted, of any meeting of a municipal council, school board, board of education, department of health, local board of health, or of any other board or local authority formed or constituted under any of the provisions of any public Act of any of the provinces of Canada or of the Parliament of Canada, or of any committee appointed by any of the above-mentioned bodies, and the publication of the whole, or a portion or a fair synopsis, of any report, bulletin, notice or other document, issued for the information of the Privileged publications.

public from any government office or department, or by any department of health, minister of health, medical officer of health, or local board of health, or the publication, at the request of any government or municipal official, commissioner of police, or chief constable, of any notice or report issued by him for the information of the public, shall be privileged, unless it is proved that such publication was made maliciously.

Improper matter.

(2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter.

When defendant refuses to publish explanation.

(3) The protection intended to be afforded by this section shall not be available as a defence in any proceeding if the plaintiff shows that the defendant has refused to insert in the newspaper making such publication a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff.

Saving.

(4) Nothing in this section shall limit or abridge any privilege now by law existing, or protect the publication of any matter not of public concern or the publication of which is not for the public benefit.

Interpretation.

(5) In this section, "public meeting" means a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern whether the admission thereto be general or restricted. R.S.O. 1937, c. 113, s. 9.

Report of proceedings in courts.

10.—(1) A fair and accurate report without comment in a newspaper of proceedings publicly heard before a court of justice, if published contemporaneously with such proceedings, shall be absolutely privileged unless the defendant has refused or neglected to insert in the newspaper in which the report complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff.

Improper matter.

(2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter. R.S.O. 1937, c. 113, s. 10.

Security for costs.

11.—(1) In an action for libel contained in a newspaper the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or his agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a judgment is given in favour of the defendant, that the defendant has a good

defence upon the merits, and that the statements complained of were published in good faith, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order shall be a stay of proceedings until the security is given.

(2) Where the alleged libel involves a criminal charge, the defendant shall not be entitled to security for costs under this Act unless he satisfies the court that the action is trivial or frivolous, or that the circumstances which under section 7 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstance that the article complained of involves a criminal charge.

Where libel involves a criminal charge.

(3) For the purposes of this section the plaintiff or the defendant or their agents may be examined upon oath at any time after the delivery of the statement of claim.

Examination of parties.

(4) An order made under this section by a judge of the Supreme Court shall be final and shall not be subject to appeal, but where the order is made by a local judge an appeal therefrom shall lie to a judge of the Supreme Court sitting in chambers, whose order shall be final and shall not be subject to appeal. R.S.O. 1937, c. 113, s. 11.

When order of judge respecting security final.

12. An action for libel contained in a newspaper shall be tried in the county where the chief office of such newspaper is, or in the county wherein the plaintiff resides at the time the action is brought; but upon the application of either party the court may direct the action to be tried, or the damages to be assessed, in any other county if it appears to be in the interests of justice, or that it will promote a fair trial, and may impose such terms as to the payment of witness fees, and otherwise, as may seem proper. R.S.O. 1937, c. 113, s. 12.

Place of trial.

13. An action for libel contained in a newspaper shall be commenced within three months after the publication thereof has come to the notice or knowledge of the person defamed; but where an action is brought and is maintainable for a libel published within that period the same may include a claim for any other libel published against the plaintiff by the defendant in the same newspaper within a period of one year before the commencement of the action. R.S.O. 1937, c. 113, s. 13.

Limitation of actions.

Publication
of name of
publisher,
etc.

14.—(1) No defendant shall be entitled to the benefit of sections 7 and 13 unless the name of the proprietor and publisher and address of publication are stated either at the head of the editorials or on the front page of the newspaper.

Copy of
newspaper
to be
prima facie
evidence.

(2) The production of a printed copy of a newspaper shall be *prima facie* evidence of the publication of the printed copy, and of the truth of the statements mentioned in subsection 1. R.S.O. 1937, c. 113, s. 14.

Service of
notices and
of writ.

15. Service of any notice under this Act and of the writ of summons may be made upon the proprietor or publisher of the newspaper by serving the same upon any grown up person at such address. R.S.O. 1937, c. 113, s. 15.

Evidence in
mitigation of
damages.

16. In an action for libel contained in a newspaper the defendant may prove in mitigation of damages that the plaintiff has already brought actions for, or has recovered damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as that for which such action is brought. R.S.O. 1937, c. 113, s. 16.

Application
of s. 7 (1)
and s. 13.

17. Subsection 1 of section 7 and section 13 shall only apply to newspapers printed and published in Ontario. R.S.O. 1937, c. 113, s. 17.

Slander of
women.

18.—(1) In an action for slander for defamatory words spoken of a woman imputing unchastity or adultery it shall not be necessary to allege in the plaintiff's statement of claim or to prove that special damage resulted to the plaintiff from the utterance of such words, and the plaintiff may recover damages without averment or proof of special damage.

Security
for costs.

(2) The defendant may, at any time after the delivery of the statement of claim, apply to the court for security for costs, upon notice and an affidavit showing the nature of the action, and that the plaintiff is not possessed of property sufficient to answer the costs of the action if a verdict or judgment is given in favour of the defendant, and that the defendant has a good defence on the merits, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order shall be a stay of proceedings until the security is given.

Examination
of parties.

(3) For the purposes of subsection 2, the plaintiff or the defendant may be examined upon oath at any time after the delivery of the statement of claim. R.S.O. 1937, c. 113, s. 18.

CHAPTER 205

The Lieutenant-Governor Act

1. In matters within the jurisdiction of the Legislature all powers, authorities and functions which, in respect of like matters, were vested in or exercisable by the governors or lieutenant-governors of the several provinces now forming part of Canada or any of the provinces, under commissions, instructions or otherwise, at or before the passing of the *British North America Act, 1867*, are, and shall be, so far as the Legislature has power thus to enact, vested in and exercisable by the Lieutenant-Governor or Administrator for the time being of Ontario, in the name of His Majesty or otherwise as the case may require, subject always to the Royal Prerogative as heretofore. R.S.O. 1937, c. 13, s. 1.

Powers
vested in
Lieutenant-
Governor.

2. Section 1 shall be deemed to include the power of commuting and remitting sentences for offences against the laws of Ontario or offences over which the legislative authority of Ontario extends. R.S.O. 1937, c. 13, s. 2.

Power to
remit
sentences.

3. The Lieutenant-Governor and his successors shall be a corporation sole; and all bonds, recognizances and other instruments by law required to be taken to him in his public capacity, shall be taken to him and his successors by his name of office, and may be sued for and recovered by him or his successors, by his or their name of office as such; and the same shall not in any case go to or vest in the personal representatives of the Lieutenant-Governor during whose government the same were so taken. R.S.O. 1937, c. 13, s. 3.

Lieutenant-
Governor to
be a corpora-
tion sole.

4. The Lieutenant-Governor may, with the advice and consent of the Executive Council, from time to time appoint any person or persons, jointly or severally, to be his deputy or deputies for Ontario or any part or parts thereof, for the purpose of executing marriage licences, money warrants and commissions under any Act of the Legislature. R.S.O. 1937, c. 13, s. 4.

Power to
appoint
deputies for
certain
purposes.

CHAPTER 206

The Lightning Rods Act**1. In this Act,**Interpre-
tation.

(a) "Fire Marshal" means the Fire Marshal of Ontario;

(b) "inspector" means an inspector appointed under this Act;

(c) "lightning rods" means the points, cables, groundings and other apparatus installed or to be installed to protect buildings and structures from damage by lightning;

(d) "regulations" means regulations made under this Act;

(e) "Treasurer" means Treasurer of Ontario. 1948, c. 52, s. 1.

2. No person shall offer for sale, sell or install lightning rods unless licensed to do so by the Fire Marshal under this Act. 1948, c. 52, s. 2.

Sellers, etc., of lightning rods to be licensed.

3.—(1) Upon receipt of,

(a) an application on the prescribed form for a licence to offer for sale, sell and install lightning rods, containing a sworn statement of the amount received from the sale of lightning rods in Ontario during the previous licence year and a statement of the specifications of the lightning rods to be offered for sale, sold and installed during the licence year;

Power to license.

(b) a licence fee computed at four-fifths of one per cent of the amount received from the sale of lightning rods in Ontario during the preceding licence year, and in addition the sum of \$50, payable to the Treasurer; and

(c) samples of the lightning rods to be offered for sale, sold and installed during the licence year, or such parts thereof as may be required by the Fire Marshal,

the Fire Marshal, if he is satisfied that the applicant is entitled to public confidence, may issue to the applicant a licence to offer for sale, sell and install lightning rods, and the licence

shall remain in force until the 31st day of December next after the date of issuance unless it is sooner suspended or revoked.

What may
be sold, etc.

(2) No licensee under this section shall offer for sale, sell or install lightning rods other than those in respect of which the licence was issued. 1948, c. 52, s. 3.

Agents.

4.—(1) Upon receipt of,

- (a) an application on the prescribed form from a licensee under section 3 for a licence for the person named therein, who shall be a resident of Ontario, to act as an agent of such licensee, containing a statement in writing from the person named therein giving the address of his place of residence and place of business, his experience in connection with lightning rods, and his financial standing with any licensee under section 3 for whom he has acted as agent; and

(b) a licence fee of \$3 payable to the Treasurer,

the Fire Marshal, if he is satisfied that the person named is entitled to public confidence, may issue a licence to him to act as agent for the licensee, and the licence shall remain in force until the 31st day of December next after the date of issuance unless it is sooner suspended or revoked.

What may
be sold, etc.
by agents.

(2) No licensed agent shall offer for sale, sell or install lightning rods other than those in respect of which his principal is licensed. 1948, c. 52, s. 4.

Power to
suspend
and revoke
licences.

5. The Fire Marshal may, after a hearing, suspend or revoke a licence for non-compliance with this Act or the regulations. 1948, c. 52, s. 5.

Duty to
exhibit
licence.

6. Every person offering for sale, selling or installing lightning rods shall exhibit his licence,

- (a) to every person to whom he offers to sell or sells, or for whom he installs lightning rods; and
- (b) upon demand to any mayor, reeve, fire chief, district deputy fire marshal, assistant to the Fire Marshal, fire prevention officer or police officer. 1948, c. 52, s. 6.

Certificate of
installation.

7.—(1) Every person who installs lightning rods on any building or structure shall, upon completion of the work, make a certificate of installation in triplicate on the prescribed form showing,

- (a) his name, address and licence number and where he is an agent, the name, address and licence number of his principal;
- (b) the name and address of the owner of the building or structure;
- (c) the location of the building or structure;
- (d) a diagram of the building or structure marking the location of each grounding;
- (e) the nature and condition of the soil at each grounding;
- (f) the method of each grounding,

and certifying that the facts shown are true and that the installation has been made in accordance with this Act and the regulations, and after signing he shall present the certificate for the signature of the owner or his agent to confirm that the nature and condition of the soil and the method of each grounding are as described.

(2) Every person who makes a certificate of installation shall give a copy thereof to the owner or his agent and forward a copy to the Fire Marshal. 1948, c. 52, s. 7. Disposal of copies.

8. Every person who fails to comply with this Act or the regulations shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$200 or to imprisonment for a term of not more than six months for each offence, or to both fine and imprisonment. 1948, c. 52, s. 8. Penalties for failure to comply with Act.

9.—(1) Where upon inspection an installation of lightning rods is found not to conform with this Act and the regulations, the licensee under section 3 who made the installation shall within 60 days from the receipt of the inspector's report or such further period as may be allowed by the Fire Marshal, make such alterations or additions thereto as the inspector considers necessary to make the installation conform with this Act and the regulations, but this subsection shall not apply where the installation is found not to so conform by reason of alterations or additions made thereto or to the building or structure other than by the licensee. Non-conforming installations.

(2) Where upon inspection an installation of lightning rods is found to conform with this Act and the regulations, the inspector may attach a seal indicating that the installation is at the time of the inspection in conformity with this Act and the regulations. 1948, c. 52, s. 9. Conforming installations.

Right to
recover for
loss.

10.—(1) Where lightning rods that were installed on a building or structure by a licenced person have been installed for less than 10 years and the owner thereof has suffered loss by reason of damage by lightning to the lightning rods, building or structure, and where no alterations or additions or repairs that affect the proper operation of the lightning rods have been made to the lightning rods or to the building or structure by persons other than the licensee, the owner may bring an action against the licensee for recovery of the amount of loss, not exceeding the total cost of the installation.

Notice of
claim;
commence-
ment of
action.

(2) Notice of any such claim shall be given to the licensee within a period of 30 days after the loss was suffered, and the action shall be commenced not less than 60 days and not more than one year after the loss was suffered. 1948, c. 52, s. 10.

Application
of licence
fees.

11. Licence fees paid to the Treasurer under this Act shall be added to the special fund for the maintenance of the office of the Fire Marshal. 1948, c. 52, s. 11.

Inspectors.

12. The Lieutenant-Governor in Council may appoint one or more inspectors to enforce this Act and the regulations. 1948, c. 52, s. 12.

Application
of Act.

13. This Act shall not apply to the installation of lightning rods on any building or structure by the owner or occupant of the building or structure where he himself does the work, or the work is done by his employee or employees under his direction. 1948, c. 52, s. 13.

Regulations.

14. The Lieutenant-Governor in Council may make regulations,

- (a) prescribing minimum standards for lightning rods;
- (b) governing the manner of installing lightning rods;
- (c) designating buildings or structures or classes of buildings or structures to which this Act shall not apply;
- (d) prescribing the form of,
 - (i) the application for a licence to offer for sale, sell and install lightning rods,
 - (ii) the licence to offer for sale, sell and install lightning rods,

- (iii) the application for a licence to act as an agent to offer for sale, sell and install lightning rods,
 - (iv) the licence to act as agent to offer for sale, sell and install lightning rods,
 - (v) the certificate of installation of lightning rods,
 - (vi) the report of the inspector mentioned in subsection 1 of section 9,
 - (vii) the seal mentioned in subsection 2 of section 9. 1948, c. 52, s. 14.
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CHAPTER 207

The Limitations Act

1. In this Act,

Interpre-
tation.

- (a) "action" includes an information on behalf of the Crown and any civil proceeding;
- (b) "assurance" means any deed or instrument, other than a will, by which land may be conveyed or transferred;
- (c) "land" includes messuages and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency;
- (d) "rent" includes all annuities and periodical sums of money charged upon or payable out of land. R.S.O. 1937, c. 118, s. 1.

PART I

REAL PROPERTY

2. Nothing in this Act shall interfere with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act. R.S.O. 1937, c. 118, s. 2.

Refusing
relief because
of acquies-
cence or
otherwise.

3.—(1) No entry, distress, or action shall be made or brought on behalf of His Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within 60 years next after the right to make such entry or distress or to bring such action shall have first accrued to His Majesty.

Limitation
where the
Crown
interested.

Application
of certain
sections to
Crown.

(2) Subsections 1 to 3, 5 to 7, and 9 to 12 of section 5 and sections 6, 8 to 11 and 13 to 15 shall apply to rights of entry, distress or action asserted by or on behalf of His Majesty. R.S.O. 1937, c. 118, s. 3.

Limitation
where the
subject
interested.

4. No person shall make an entry or distress, or bring an action to recover any land or rent, but within 10 years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom he claims, or if the right did not accrue to any person through whom he claims, then within 10 years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing the same. R.S.O. 1937, c. 118, s. 4.

When right
accrues on
dispossession.

5.—(1) Where the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed, been in possession or in receipt of the profits of the land, or in receipt of the rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time of the dispossession or discontinuance of possession, or at the last time at which any such profits or rent were so received:

On death.

(2) Where the person claiming such land or rent claims the estate or interest of a deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, the right shall be deemed to have first accrued at the time of such death.

On alienation.

(3) Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by an assurance to him or some person through whom he claims, by a person being, in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent; and no person entitled under the assurance has been in possession or receipt, the right shall be deemed to have first accrued at the time at which the person so claiming or the person, through whom he claims, became entitled to such possession or receipt by virtue of the assurance.

As to land
not cultivated
or improved.

(4) In the case of land granted by the Crown of which the grantee, his heirs or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon

or cultivating some part thereof, and of which some other person not claiming to hold under such grantee has been in possession, such possession having been taken while the land was in a state of nature, then unless it is shown that the grantee or person claiming under him while entitled to the land had knowledge of the same being in the actual possession of such other person, the lapse of 10 years shall not bar the right of the grantee or any person claiming under him to bring an action for the recovery of the land, but the right to bring an action shall be deemed to have accrued from the time that such knowledge was obtained; but no action shall be brought or entry made after 20 years from the time such possession was taken.

(5) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of \$4 or upwards is reserved, and the rent reserved by the lease has been received by some person wrongfully claiming to be entitled to the land or rent in reversion immediately expectant on the determination of the lease, and no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to the land or rent, subject to the lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person so wrongfully claiming, and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

Where rent reserved by lease in writing has been wrongfully received.

(6) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received, whichever last happened.

Where tenancy from year to year.

(7) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or

In the case of a tenant at will.

distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration of one year next after the commencement of the tenancy, at which time the tenancy shall be deemed to have determined.

Case of
mortgagor or
cestui que
trust.

(8) No mortgagor or *cestui que trust* shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of subsection 7.

In case of
forfeiture or
breach of
condition.

(9) Where the person claiming such land or rent, or the person through whom he claims, has become entitled by reason of any forfeiture or breach of condition, such right shall be deemed to have first accrued when the forfeiture was incurred or the condition broken.

Where
advantage of
forfeiture is
not taken
by remain-
der man.

(10) Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when the same became an estate or interest in possession as if no such forfeiture or breach of condition had happened.

In case of
future
estates.

(11) Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of the land, or the receipt of the rent, in respect of such estate or interest, such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

Further
provision for
cases of
future
estates.

(12) A right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which the same became an estate or interest in possession, by the determination of any estate or estates in respect of which the land has been held or the profits thereof or the rent have been received, notwithstanding that the person claiming the land or rent, or some person through whom he claims, has, at any time before to the creation of the estate or estates which have determined, been in the possession or receipt of the profits of the land, or in receipt of the rent.

R.S.O. 1937, c. 118, s. 5.

6.—(1) If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of the land, or in receipt of the rent, at the time when his interest determined, no such entry or distress shall be made and no such action shall be brought by any person becoming entitled in possession to a future estate or interest, but within ten years next after the time when the right to make an entry or distress, or to bring an action for the recovery of the land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of those two periods is the longer.

Limitation in case of future estates when person entitled to the particular estate out of possession, etc.

(2) If the right of any such person to make such entry or distress, or to bring any such action, has been barred, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will or settlement executed or taking effect after the time when a right to make an entry or distress or to bring an action for the recovery of the land or rent, first accrued to the owner of the particular estate whose interest has so determined, shall make any entry or distress, or bring any action, to recover the land or rent.

The case of bar of future estate and of a subsequent interest created after right of entry, etc., accrued to owner of particular estate.

(3) Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he has been entitled for an estate or interest in possession, has been barred by the determination of the period which is applicable in such case, and such person has, at any time during such period, been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or by any person claiming through him, to recover the land or rent in respect of such other estate, interest, right or possibility, unless in the meantime the land or rent has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of such estate or interest in possession. R.S.O. 1937, c. 118, s. 6.

Bar of right to future estates acquired after bar of particular estate.

7. For the purposes of this Act an administrator claiming the estate or interest of the deceased person of whose property he has been appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. R.S.O. 1937, c. 118, s. 7.

When right of action devolves to administrator.

Effect of
mere entry

8. No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon. R.S.O. 1937, c. 118, s. 8.

Continual
claim.

9. No continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action. R.S.O. 1937, c. 118, s. 9.

Descent cast,
discontinu-
ance,
warranty,
etc.

10. No descent cast, discontinuance or warranty, which has happened or been made since the 1st day of July, 1834, or which may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land. R.S.O. 1937, c. 118, s. 10.

Possession of
one coparcen-
er, etc.

11. Where any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common has or have been in possession or receipt of the entirety, or more than his or their undivided share or shares of the land, or of the profits thereof, or of the rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of, or by the last-mentioned person or persons or any of them. R.S.O. 1937, c. 118, s. 11.

Possession of
relations.

12. Where a relation of the persons entitled as heirs to the possession or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs. R.S.O. 1937, c. 118, s. 12.

Effect of
acknowledg-
ment in
writing.

13. Where any acknowledgment in writing of the title of the person entitled to any land or rent has been given to him or to his agent, signed by the person in possession or in receipt of the profits of the land, or in the receipt of the rent, such possession or receipt of or by the person by whom the acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent the acknowledgement was given at the time of giving the same, and the right of the last-mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to recover the land or rent, shall be deemed to have first accrued at and not before the time at which the acknowledgment, or the last of the acknowledgments, if more than one, was given. R.S.O. 1937, c. 118, s. 13.

14. The receipt of the rent payable by any lessee, shall, Effect of receipt of rent. as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act. R.S.O. 1937, c. 118, s. 14.

15. At the determination of the period limited by this Act to any person for making an entry or distress or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress or action respectively might have been made or brought within such period, shall be extinguished. Extinguishment of right at the end of the period of limitation. R.S.O. 1937, c. 118, s. 15.

16. Nothing in sections 1 to 15 shall apply to any waste or vacant land of the Crown, whether surveyed or not, nor to lands included in any road allowance heretofore or hereafter surveyed and laid out or to any lands reserved or set apart or laid out as a public highway where the freehold in any such road allowance or highway is vested in the Crown or in a municipal corporation, commission or other public body, but nothing in this section shall be deemed to affect or prejudice any right, title or interest acquired by any person before the 13th day of June, 1922. Waste or vacant land of Crown excepted. R.S.O. 1937, c. 118, s. 16.

ARREARS OF RENT, AND INTEREST

17.—(1) No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, whether it is or is not charged upon land, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action, but within six years next after the same respectively has become due, or next after any acknowledgment in writing of the same has been given to the person entitled thereto or his agent, signed by the person by whom the same was payable or his agent. Maximum of arrears of rent or interest recoverable.

(2) This section shall not apply to an action for redemption brought by a mortgagor or any person claiming under him. Exception as to action for redemption. R.S.O. 1937, c. 118, s. 17.

18. Where any prior mortgagee or other encumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action is brought by any person entitled to a subsequent mortgage or other encumbrance on the same land, the person entitled to the subsequent mortgage or encumbrance may recover Exception in favour of subsequent mortgagee when a prior mortgagee has been in possession.

in the action the arrears of interest which have become due during the whole time that the prior mortgagee or encumbrancer was in such possession or receipt, although the time may have exceeded the term of six years. R.S.O. 1937, c. 118, s. 18.

MORTGAGES AND CHARGES ON LAND

Limitation
where a
mortgagee
in
possession.

19. Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action to redeem the mortgage, but within 10 years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagor or to some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him, and in such case no such action shall be brought, but within 10 years next after the time at which the acknowledgment, or the last of the acknowledgments if more than one, was given. R.S.O. 1937, c. 118, s. 19.

Acknowledgment
to one of
several
mortgagors.

20. Where there are more mortgagors than one, or more persons than one claiming through the mortgagor or mortgagors, the acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons. R.S.O. 1937, c. 118, s. 20.

Acknowledgment
to one
of several
mortgagees.

21. Where there are more mortgagees than one, or more persons than one claiming the estate or interest of the mortgagee or mortgagees, the acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the person or persons so signing, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him, or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons as have given the acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on

payment, with interest, of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of the divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage.— R.S.O. 1937, c. 118, s. 21.

22. Any person entitled to or claiming under a mortgage of land may make an entry or bring an action to recover the land at any time within 10 years next after the last payment of any part of the principal money or interest secured by the mortgage, although more than 10 years have elapsed since the time at which the right to make such entry or bring such action first accrued. R.S.O. 1937, c. 118, s. 22.

Limitation where mortgage in arrear.

23.—(1) No action shall be brought to recover out of any land or rent any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of the land or rent, or to recover any legacy, whether it is or is not charged upon land, but within 10 years next after a present right to receive the same accrued to some person capable of giving a discharge for, or release of the same, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person by whom the same is payable, or his agent, has been given to the person entitled thereto or his agent, and in such case no action shall be brought but within 10 years after the payment or acknowledgment, or the last of the payments or acknowledgments if more than one, was made or given.

Limitation where money charged upon land and legacies.

(2) Notwithstanding subsection 1, a lien or charge created by the placing of an execution or other process against land in the hands of the sheriff or other officer to whom it is directed, shall remain in force so long as the execution or other process remains in the hands of the sheriff or officer for execution and is kept alive by renewal or otherwise. R.S.O. 1937, c. 118, s. 23.

Execution against land.

24. No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust. R.S.O. 1937, c. 118, s. 24.

Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising same.

DOWER

Limitation
of action
of dower.

25. Subject to section 26, no action of dower shall be brought but within 10 years from the death of the husband of the dowress, notwithstanding any disability of the dowress or of any person claiming under her. R.S.O. 1937, c. 118, s. 25.

Time from
which right
to bring
action of
dower to be
computed.

26. Where a dowress has, after the death of her husband, actual possession of the land of which she is dowable, either alone or with an heir or devisee of, or a person claiming by devolution from her husband, the period of 10 years within which her action of dower is to be brought shall be computed from the time when such possession of the dowress ceased. R.S.O. 1937, c. 118, s. 26.

Maximum of
arrears of
dower
recoverable.

27. No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action for a longer period than six years next before the commencement of such action. R.S.O. 1937, c. 118, s. 27.

ESTATES TAIL

Limitation in
case of those
whose rights
tenant in tail
could have
barred.

28. Where the right of a tenant in tail of any land, or rent to make an entry or distress, or to bring an action to recover the same, has been barred by reason of the same not having been made or brought within the period limited by this Act, no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which the tenant in tail might lawfully have barred. R.S.O. 1937, c. 118, s. 28.

Case where
tenant in tail
has died dur-
ing period of
limitation.

29. Where a tenant in tail of any land or rent, entitled to recover the same, has died before the expiration of the period applicable in such case for making an entry or distress or bringing an action to recover the land or rent, no person claiming any estate, interest or right which the tenant in tail might lawfully have barred, shall make an entry or distress, or bring an action, to recover the land or rent, but within the period during which, if the tenant in tail had so long continued to live, he might have made such entry or distress or brought such action. R.S.O. 1937, c. 118, s. 29.

Where
possession
under an
assurance by
a tenant in
tail does not
bar the
remainders.

30. Where a tenant in tail of any land or rent has made an assurance thereof, which does not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person is by virtue of the assurance, at the time of the execution thereof, or at any time afterwards, in possession or receipt of the profits of the land, or in the receipt of the rent, and the same person, or any other person, other than a person entitled to such possession or receipt in respect

of an estate which has taken effect after or in defeasance of the estate tail, continues or is in such possession or receipt for the period of 10 years next after the commencement of the time at which the assurance, if it had then been executed by the tenant in tail, or the person who would have been entitled to his estate tail if the assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates, then, at the expiration of the period of 10 years, the assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail. R.S.O. 1937, c. 118, s. 30.

CONCEALED FRAUD

31. In every case of a concealed fraud the right of any person to bring an action for the recovery of any land or rent of which he or any person through whom he claims may have been deprived by such fraud shall be deemed to have first accrued at and not before the time at which such fraud was or with reasonable diligence might have been first known or discovered. R.S.O. 1937, c. 118, s. 31.

Cases where fraud remains concealed.

32. Nothing in section 31 shall enable any owner of land or rent to bring an action for the recovery of the land or rent, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of the fraud, and who, at the time that he made the purchase did not know, and had no reason to believe that any such fraud had been committed. R.S.O. 1937, c. 118, s. 32.

Case of bona fide purchaser for value without notice.

PRESCRIPTION IN CASE OF EASEMENTS

33. No claim which may be lawfully made at the common law, by custom, prescription or grant, to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or of any person, except such matters or things as are hereinafter specially provided for, and except rent and services, where the profit or benefit has been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of 30 years, shall be defeated or destroyed by showing only that the profit or benefit was first taken or enjoyed at any time prior to the period of 30 years, but nevertheless the claim may be defeated in any other way by which the same is now liable to be defeated, and when the profit or benefit has been so taken and enjoyed for the full period of 60 years, the right thereto shall be deemed absolute and indefeasible, unless it appears

Limitation in case of profits.

that the same was taken and enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1937, c. 118, s. 33.

Right of way easement, etc.

34. No claim which may lawfully be made at the common law by custom, prescription or grant, to any way or other easement, or to any water-course, or the use of any water to be enjoyed, or derived upon, over, or from any land or water of the Crown or being the property of any person, when the way or other matter as herein last before mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period of 20 years shall be defeated or destroyed by showing only that the way or other matter was first enjoyed at any time prior to the period of 20 years, but, nevertheless the claim may be defeated in any other way by which the same is now liable to be defeated, and where the way or other matter as herein last before-mentioned has been so enjoyed for the full period of 40 years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1937, c. 118, s. 34.

How period to be calculated, and what acts deemed an interruption.

35. Each of the respective periods of years mentioned in sections 33 and 34 shall be deemed and taken to be the period next before some action wherein the claim or matter to which such period relates was or is brought into question, and no act or other matter shall be deemed an interruption within the meaning of those sections, unless the same has been submitted to or acquiesced in for one year after the person interrupted has had notice thereof, and of the person making or authorizing the same to be made. R.S.O. 1937, c. 118, s. 35.

Right to access and use of light by prescription abolished.

36. No person shall acquire a right by prescription to the access and use of light or to the access and use of air to or for any dwelling-house, work-shop or other building, but this section shall not apply to any such right acquired by 20 years use before the 5th day of March, 1880. R.S.O. 1937, c. 118, s. 36.

Necessity for strict proof.

37. In the cases mentioned in and provided for by this Act, of claims to ways, water-courses or other easements, no presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as is applicable to the case and to the nature of the claim. R.S.O. 1937, c. 118, s. 37.

38. No easement in respect of wires or cables attached to property or buildings or passing through or carried over such property or buildings shall be deemed to have been acquired or shall hereafter be acquired by prescription or otherwise than by grant from the owner of the property or buildings. R.S.O. 1937, c. 118, s. 38.

Easements not acquired for carrying wires and cables.

DISABILITIES AND EXCEPTIONS IN CASES OF LAND OR RENT

39. If at any time at which the right of any person to make an entry or distress, or to bring an action to recover any land or rent, first accrues, as herein mentioned, such person is under the disability of infancy, mental deficiency, mental incompetency or unsoundness of mind, such person, or the person claiming through him, notwithstanding that the period of ten years or five years, as the case may be, hereinbefore limited has expired, may make an entry or distress, or bring an action, to recover the land or rent at any time within five years next after the time at which the person to whom the right first accrued ceased to be under any such disability, or died, whichever of those two events first happened. R.S.O. 1937, c. 118, s. 39.

Persons under disability at the time when the right of action accrues.

40. No entry, distress or action, shall be made or brought by any person, who, at the time at which his right to make any entry or distress, or to bring an action, to recover any land or rent first accrued was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty years next after the time at which the right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of the twenty years, or although the term of five years from the time at which he ceased to be under any such disability or died, may not have expired. R.S.O. 1937, c. 118, s. 40.

Utmost allowance for disabilities.

41. Where any person is under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent first accrues, and dies without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover the land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover the land or rent, first accrued or the period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person. R.S.O. 1937, c. 118, s. 41.

Succession of disabilities.

IN CASES OF EASEMENTS

Persons under disability when right accrues.

42. The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in sections 33 to 38, is an infant, mentally defective person, mentally incompetent person, of unsound mind, or tenant for life, or during which any action has been pending and has been diligently prosecuted, shall be excluded in the computation of the period mentioned in such sections, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. R.S.O. 1937, c. 118, s. 42.

Exclusion of terms of years, etc. from computation in certain cases.

43. Where any land or water upon, over or from which any such way or other easement, water-course or use of water has been enjoyed or derived, has been held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before-mentioned during the continuance of such term shall be excluded in the computation of the period of forty years mentioned in section 34, if the claim is within three years next after the end or sooner determination of such term, resisted by any person entitled to any reversion expectant on the determination thereof. R.S.O. 1937, c. 118, s. 43.

Exception as to lands of the Crown not duly surveyed and laid out.

44. Nothing in sections 33 to 38 shall support or maintain any claim to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of the Crown, unless the land, way, easement, water-course or other matter lies and is situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by authority of the Crown. R.S.O. 1937, c. 118, s. 44.

PART II

TRUSTS AND TRUSTEES

Application of Part II.

45. This Part shall apply to a trust created by an instrument or an Act of the Legislature heretofore or hereafter executed or passed. R.S.O. 1937, c. 118, s. 45.

Interpretation.

46.—(1) In this section, "trustee" includes an executor, an administrator, a trustee whose trust arises by construction or implication of law as well as an express trustee, and a joint trustee.

(2) In an action against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof, still retained by the trustee, or previously received by the trustee and converted to his use, the following shall apply:

Actions
against
trustees.

(a) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee.

(b) If the action is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of, and be at liberty to plead, the lapse of time as a bar to such action in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(3) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action and this section had been pleaded. R.S.O. 1937, c. 118, s. 46 (1-3).

Effect of
judgment
upon rights
of
beneficiaries.

47.—(1) Where any land or rent is vested in a trustee upon any express trust, the right of the *cestui que trust* or any person claiming through him to bring an action against the trustee or any person claiming through him to recover the land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which the land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

When right
accrues
in case of
express trust.

(2) Subject to section 46, no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be

Claim of
cestui que
trust against
trustee.

barred by any statute of limitations. R.S.O. 1937, c. 118, s. 47.

PART III

PERSONAL ACTIONS

Limitation
of time for
commencing
particular
actions.

48.—(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:

- (a) an action for rent, upon an indenture of demise;
- (b) an action upon a bond, or other specialty, except upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1894;
- (c) an action upon a judgment or recognizance,

within twenty years after the cause of action arose;

- (d) an action upon an award where the submission is not by specialty;
- (e) an action for an escape;
- (f) an action for money levied on execution;
- (g) an action for trespass to goods or land, simple contract or debt grounded upon any lending or contract without specialty, debt for arrears of rent, detinue, replevin or upon the case other than for slander,

within six years after the cause of action arose;

- (h) an action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved, within two years after the cause of action arose;
- (i) an action upon the case for words, within two years after the words spoken;
- (j) an action for assault, battery, wounding or imprisonment, within four years after the cause of action arose;
- (k) an action upon a covenant contained in an indenture of mortgage or any other instrument made on or after the 1st day of July, 1894, to repay the whole or part of any moneys secured by a mortgage, within ten years after the cause of action arose or within ten years after the date upon which the person liable on the covenant conveyed or transferred his interest in the mortgaged lands, whichever is later in point of time;

(l) an action by a mortgagee against a grantee of the equity of redemption under section 18 of *The Mortgages Act*, within ten years after the cause of action arose; Rev. Stat., c. 239.

(m) an action for a penalty imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose. R.S.O. 1937, c. 118, s. 48 (1); 1939, c. 25, s. 1; 1949, c. 51, s. 1.

(2) Nothing in this section shall extend to any action where the time for bringing the action is by any statute specially limited. Where time specially limited. R.S.O. 1937, c. 118, s. 48 (2).

49. Every action of account, or for not accounting, or for such accounts as concerns the trade of merchandise between merchant and merchant, their factors and servants, shall be commenced within six years after the cause of action arose, and no claim in respect of a matter which arose more than six years before the commencement of the action shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of the action. Actions of account, &c. R.S.O. 1937, c. 118, s. 49.

50. Where a person entitled to bring any action mentioned in either section 48 or 49 is at the time the cause of action accrues an infant, mental defective, mental incompetent or of unsound mind, the period within which the action should be brought shall be reckoned from the date when such person became of full age or of sound mind. In case of disability of plaintiff. R.S.O. 1937, c. 118, s. 50.

51. If a person against whom any cause of action mentioned in sections 48 and 49 accrues is at such time out of Ontario, the person entitled to the cause of action may bring the action within such times as are before limited after the return of the absent person to Ontario. Non-resident defendants. R.S.O. 1937, c. 118, s. 51.

52.—(1) Where a person has any such cause of action against joint debtors or joint contractors, he shall not be entitled to any time within which to commence such action against any one of them who was within Ontario at the time the cause of action accrued, by reason only that some other of them was, at the time the cause of action accrued, out of Ontario. Where some joint debtors have been within and some without Ontario.

Effect of
recovery
against one
joint debtor.

(2) The person having such cause of action shall not be barred from commencing an action against a joint debtor or joint contractor who was out of Ontario at the time the cause of action accrued, after his return to Ontario, by reason only that judgment has been already recovered against a joint debtor or joint contractor who was at such time within Ontario. R.S.O. 1937, c. 118, s. 52.

ACKNOWLEDGMENTS OR PROMISES

Effect of
written
acknowledg-
ment or part
payment.

53.—(1) Where an acknowledgment in writing, signed by the principal party or his agent, is made by a person liable upon an indenture, specialty, judgment or recognizance, or where an acknowledgment is made by such person by part payment, or part satisfaction, on account of any principal or interest due on the indenture, specialty, judgment or recognizance, the person entitled may bring an action for the money remaining unpaid and so acknowledged to be due, within 20 years, or, in the cases mentioned in clause *k* of subsection 1 of section 48, within 10 years after the acknowledgment in writing, or part payment, or part satisfaction, or where the person entitled is, at the time of the acknowledgment under disability as aforesaid, or the person making the acknowledgment is, at the time of making the same, out of Ontario, then within 20 years, or in the cases aforesaid within 10 years, after the disability has ceased, or the person has returned, as the case may be. R.S.O. 1937, c. 118, s. 53; 1949, c. 51, s. 2.

Application
of section.

(2) In the case of an action upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1939, or upon a covenant contained in any instrument made on or after the 1st day of July, 1939, to pay the whole or part of any moneys secured by a mortgage, this section shall not apply to part payments on the mortgage made by a person other than the person liable on the covenant or to acknowledgments in writing signed by any person other than the person liable on the covenant. 1939, c. 25, s. 2.

Promise by
words only.

54.—(1) No acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take out of the operation of this Part, any case falling within its provisions respecting actions,

(a) of account and upon the case;

(b) on simple contract or of debt grounded upon any lending or contract without specialty; and

(c) of debt for arrears of rent,

or to deprive any party of the benefit thereof, unless the acknowledgment or promise is made or contained by or in

some writing signed by the party chargeable thereby, or by his agent duly authorized to make the acknowledgment or promise.

(2) Nothing in this section shall alter, take away or lessen the effect of any payment of any principal or interest by any person. R.S.O. 1937, c. 118, s. 54. Effect of payment of principal or interest.

55. Where there are two or more joint debtors or joint contractors, or joint obligors, or covenantors, or executors or administrators of any debtor or contractor, no such joint debtor, joint contractor, joint obligor, or covenantor, or executor or administrator shall lose the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed or by reason of any payment of any principal or interest made by any other or others of them. R.S.O. 1937, c. 118, s. 55. Two or more joint contractors, obligors, covenantors, or executors.

56. In actions commenced against two or more such joint debtors, joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act, as to one or more of such joint debtors, joint contractors, or executors or administrators is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment, judgment shall be given for the plaintiff as to the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff. R.S.O. 1937, c. 118, s. 56. Judgment where plaintiff is barred as to one or more defendants, but not as to all.

57. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the person to whom the payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act. R.S.O. 1937, c. 118, s. 57. Effect of endorsement, etc., made by the payee.

58. This Part shall apply to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off on the part of any defendant. R.S.O. 1937, c. 118, s. 58. Case of set-off.

CHAPTER 208

The Limited Partnerships Act

1. A limited partnership for the transaction of any brokerage, financial, mercantile, mechanical, manufacturing or other business within Ontario, except banking, the construction or operation of railways and the business of insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter mentioned. R.S.O. 1937, c. 188, s. 1.

Formation
of limited
partner-
ships.

2. The partnership may consist of one or more persons, who shall be called general partners, and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called limited partners. R.S.O. 1937, c. 188, s. 2.

Of whom
to consist.

3. General partners shall be jointly and severally responsible as general partners are by law, but limited partners shall not be liable for the debts of the partnership beyond the amounts by them contributed to the capital. R.S.O. 1937, c. 188, s. 3.

Liability of
general and
limited
partners.

4. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same. R.S.O. 1937, c. 188, s. 4.

General
partners only
to transact
business, etc.

5. The persons desirous of forming such partnership shall make and each of them shall sign a certificate (Form 1), which shall contain,

Certificate
to be signed.

- (a) the name under which the partnership business is to be carried on;
- (b) the general nature of the business intended to be carried on;
- (c) the names of all the general and limited partners, distinguishing which are general and which are limited partners, and their usual places of residence;
- (d) the amount of capital which each limited partner has contributed;

(e) the time when the partnership is to commence and the time at which it is to terminate; and

(f) the principal place of business of the partnership.
R.S.O. 1937, c. 188, s. 5.

Execution.

6. The certificate shall be signed by the persons forming the partnership before a notary public who shall certify to the execution of the same. R.S.O. 1937, c. 188, s. 6.

Where to be filed.

7. The certificate so signed and certified shall be filed in the office of the clerk of the county or district court of the county or district in which the principal place of business named in the certificate is situate, and shall be recorded by him at full length in a book to be kept for that purpose and open to public inspection. R.S.O. 1937, c. 188, s. 7.

Fees.

8. For filing and recording the certificate the clerk shall be entitled to receive the sum of 25 cents, and shall also be entitled to receive from every person searching in the book where the certificate is so recorded the sum of 10 cents for each search. R.S.O. 1937, c. 188, s. 8.

Partnership not formed until certificate filed.

9. No such partnership shall be deemed to have been formed until the certificate has been made, certified and filed, and if any false statement is made in the certificate, all the members of the partnership shall be liable for all the engagements thereof as general partners. R.S.O. 1937, c. 188, s. 9.

Certificates of renewal or continuance.

10. Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, filed and recorded in the manner herein required for its original formation, and every partnership otherwise renewed or continued shall be deemed a general partnership. R.S.O. 1937, c. 188, s. 10.

What alterations to be deemed a dissolution.

11. Every alteration made in the partnership name, in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other manner specified in the original certificate shall be deemed a dissolution of the partnership, and every such partnership in any manner carried on after any such alteration has been made shall be deemed a general partnership unless renewed as a limited partnership according to section 10. R.S.O. 1937, c. 188, s. 11.

Partnership name.

12. The business of the partnership shall be conducted under a name in which the names of one or more of the

general partners shall be used, and unless any limited partner whose name is used in the partnership name is clearly designated as a limited partner in a line immediately beneath the name of the partnership upon letterheads, confirmations to customers and statements of account, he shall be deemed a general partner. R.S.O. 1937, c. 188, s. 12.

13. No part of the sum which a limited partner has contributed to the capital shall be withdrawn by him, or paid or transferred to him as dividends, profits or otherwise, during the continuance of the partnership; but any partner may annually receive interest at a rate not exceeding five per cent per annum on the sum so contributed by him if the payment of such interest does not reduce the original amount of the capital, and if after the payment of such interest any profits remain to be divided he may also receive his share of such profits. R.S.O. 1937, c. 188, s. 13.

Restrictions upon withdrawal of capital of limited partners.

14. If by the payment of interest or profits to a limited partner the original capital has been reduced, he shall be liable to restore the amount by which his share of the capital has been so reduced with interest. R.S.O. 1937, c. 188, s. 14.

When limited partner liable to refund.

15. A limited partner may from time to time examine into the state and progress of the partnership business, and may advise as to its management, and he shall only become liable as a general partner if, in addition to the foregoing, he takes part in the control of the business. R.S.O. 1937, c. 188, s. 15.

Rights and liabilities of limited partners.

16. The general partners shall be liable to account to each other and to the limited partners for their management of the business in like manner as other partners. R.S.O. 1937, c. 188, s. 16.

General partners liable to account.

17. In case of the insolvency or bankruptcy of the partnership a limited partner shall not, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied. R.S.O. 1937, c. 188, s. 17.

Creditors preferred to limited partners.

18. No dissolution of such partnership by the acts of the parties shall take place before the time specified in the certificate of its formation or of its renewal until a notice of the dissolution has been filed in the office in which the original certificate was filed and has been published once in each week, for three weeks, in a newspaper published in the county or district where the partnership has its principal place of business and for the same time in *The Ontario Gazette*. R.S.O. 1937, c. 188, s. 18; 1943, c. 28, s. 23.

No premature dissolution without notice, etc.

FORM 1

(Section 5)

CERTIFICATE

We, the undersigned, do hereby certify that we have entered into partnership under the name of (*B. D. & Co.*) as (*Grocers and Commission Merchants*), which firm consists of (*A. B.*) residing usually at..... and (*C. D.*) residing usually at....., as General Partners; and (*E. F.*), residing usually at....., and (*G. H.*), residing usually at....., as Limited Partners. The said (*E. F.*) having contributed \$..... and the said (*G. H.*) \$..... to the Capital of the Partnership.

The principal place of business of the Partnership is at.....

The said Partnership is to commence on the.....day of....., 19....., and is to terminate on the.....day of....., 19.....

Dated this.....day of....., 19.....

(Signed)

*A. B.**C. D.**E. F.**G. H.*

Signed in the presence of me,

L. M.,

Notary Public.

R.S.O. 1937, c. 188, Form 1.

CHAPTER 209

The Line Fences Act

1.—(1) In this Act,

Interpretation.

(a) “judge” means judge of the county or district court;

(b) “occupied lands” does not include so much of a lot as is unenclosed, although a part of it is enclosed and in actual use and occupation.

(2) Where, within the meaning of section 3, there is a dispute between owners or occupants of lands situate in different local municipalities, Idem.(a) “fence-viewers” means two fence-viewers of the municipality in which is situate the land of the owner or occupant notified under clause *a* of section 3, and one fence-viewer of the municipality in which is situate the land of the person giving the notice except that in case of a disagreement within the meaning of clause *d* of that section “fence-viewers” means fence-viewers from either or both municipalities;(b) “in which the land is situate” and “in which the land lies” mean in which is situate the land of the owner or occupant so notified under clause *a* of section 3.(3) This Act *mutatis mutandis* shall apply to unoccupied land as well as to occupied land in any township in a county or district if the council of the township passes a by-law declaring that this Act shall so apply, and if a by-law is passed it shall be the duty of the clerk of the township to send forthwith a true copy of it to the Department of Municipal Affairs. By-law making Act apply to unoccupied lands in township.
R.S.O. 1937, c. 349, s. 1.2.—(1) Owners of adjoining occupied lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them, or if there is no fence they shall make and keep up and repair the same proportion of a fence to mark such boundary. Duties of owners of adjoining occupied lands.(2) Owners of unoccupied land which adjoins occupied land, upon the unoccupied land becoming occupied, shall be Unoccupied land.

liable to keep up and repair such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned.

Unopened
road
allowance.

(3) Where there is an unopened road allowance lying between occupied lands and not enclosed by a lawful fence, it shall be the duty of the fence-viewers, when called upon, to divide the road allowance equally between the owners of the occupied lands, and to require each owner to make, keep up and maintain a just proportion of fence to mark the division line, but nothing in this section shall in any way affect or interfere with the rights of the municipality in the road allowance or be deemed to confer any title therein upon such owners or either of them. R.S.O. 1937, c. 349, s. 2.

Disputes
between
owners.

3. Where an owner of land desires fence-viewers to view and arbitrate as to what portion of such fence each owner shall make, keep up and repair, or as to the condition of an existing line fence and as to repairs being done to the same,

- (a) either owner may notify (Form 1) the other owner or the occupant of the land of the other owner that he will, on a day named, not less than one week from the service of the notice, cause three fence-viewers of the locality to arbitrate in the premises;
- (b) the owner so notifying shall also notify (Form 2) the fence-viewers not less than one week before their services are required;
- (c) the notices in both cases shall be in writing signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and the notice to an owner may be served by leaving the same at the place of abode of the owner or occupant with some grown-up person residing thereat, or, in case of the land being untenanted, by leaving the notice with any agent of the owner;
- (d) an owner notified may, within the week, object to any or all the fence-viewers notified, and in case of disagreement the judge shall name the fence-viewers who are to arbitrate. R.S.O. 1937, c. 349, s. 3.

Duty and
liability of
occupants
as to notify-
ing owners.

4. An occupant who is not the owner so notified shall immediately notify the owner, and if he neglects so to do shall be liable for all damage caused to the owner by such neglect. R.S.O. 1937, c. 349, s. 4.

5. The fence-viewers shall examine the premises, and if required by either party shall hear evidence, and may examine the parties and their witnesses on oath. R.S.O. 1937, c. 349, s. 5. Duties and powers of fence-viewers.

6.—(1) The fence-viewers shall make an award (Form 3), signed by any two of them, respecting the matters in dispute and the award shall specify the locality, quantity, description and the lowest price of the fence awarded to be made and the time within which the work shall be done, and shall state by which of the parties or in what proportion the costs of the proceedings are to be paid. Award of fence-viewers.

(2) In making the award the fence-viewers shall have regard to the nature of the fences in use in the locality, the pecuniary circumstances of the parties and the suitability of the fence to the wants of each of them. Character of fence.

(3) Where, from the formation of the ground by reason of streams or other causes, it is, in the opinion of the fence-viewers, impracticable to locate the fence upon the line between the lands of the parties, they may locate it either wholly or partly on the land of either of the parties where it seems to be most convenient, but such location shall not in any way affect the title to the land. Location of fence.

(4) The fence-viewers may employ an Ontario land surveyor and have the locality described by metes and bounds. R.S.O. 1937, c. 349, s. 6. Employment of surveyor.

7. The award shall be deposited in the office of the clerk of the municipality in which the land of the owner who initiated the proceedings is situate, and may be proved by a copy certified by the clerk, and notice in writing of its being made shall be given by the clerk to all parties interested. R.S.O. 1937, c. 349, s. 7. Deposit of award, etc.

8. The judge may, on application of either party, extend the time for making the fence as he may deem just. R.S.O. 1937, c. 349, s. 8. Extending time for making fence.

9.—(1) The party desiring to enforce the award shall serve upon the owner or occupant of the adjoining land a notice in writing requiring him to obey the award, and if it is not obeyed within one month after service of the notice may do the work which the award directs, and may immediately take proceedings to recover its value and the costs from the owner by action in the division court of any division in which any part of the land affected by the award is situate. Award, how enforced.

Collection
of debt and
costs as
taxes.

(2) Instead of requiring execution to be issued upon the judgment so recovered, the party entitled to enforce the same may obtain a certificate from the clerk of the division court of the amount due for debt and costs in respect of the judgment, and shall be entitled, upon lodging the same with the clerk of the municipality, to have the amount so certified placed upon the collector's roll, and the same may be collected in the same manner as taxes are collected, and shall until so collected or otherwise paid be a charge upon the land liable for the payment thereof, and in such case execution shall not thereafter issue on the judgment. R.S.O. 1937, c. 349, s. 9.

Award to be
a charge on
land, if
registered.

10.—(1) The award may be registered in the proper registry or land titles office and when registered shall be a charge upon the land affected by it.

How
registered.

(2) Registration may be by deposit of a duplicate of the award or of a copy, verified by affidavit, together with an affidavit of the execution of the award. R.S.O. 1937, c. 349, s. 10.

Appeals.

11.—(1) Any person dissatisfied with the award may appeal therefrom to the judge.

Notice of
appeal.

(2) The appellant shall, within one week from the time when he was notified of the award, serve upon the fence-viewers and all parties interested a notice in writing of his intention to appeal, and the notice may be served as other notices mentioned in this Act.

To clerk.

(3) The appellant shall also deliver a copy of the notice to the clerk of the division court of the division in which the land lies, and the clerk shall immediately notify the judge of the appeal and the judge shall fix a time and place for the hearing of the appeal and shall communicate the same to the clerk, and, if he thinks fit, may order such sum of money to be paid by the appellant to the clerk as will be a sufficient indemnity against the costs of the appeal.

Notice of
hearing.

(4) The clerk shall notify the fence-viewers and all parties interested of the time and place of hearing, in the manner hereinbefore provided for the service of other notices under this Act.

Powers of
judge.

(5) The judge shall hear and determine the appeal and may set aside, alter or affirm the award, or correct any error therein, and may examine the parties and their witnesses on oath, and may inspect the premises and may order payment of costs by either party and fix the amount of the costs.

(6) The decision of the judge shall be final and the award, as altered or affirmed, shall be dealt with in all respects as it would have been if it had not been appealed from. Decision of judge to be final.

(7) The practice and procedure on the appeal, including the fees payable for subpoenas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the division court. Procedure.

(8) Where the award affects land in two or more counties or districts the appeal may be to the judge of the county or district in which any part of the land is situate. R.S.O. 1937, c. 349, s. 11. Where land in different counties.

12.—(1) Each fence-viewer shall be entitled to \$2 or such larger amount, not exceeding \$5, as the council may by by-law fix for every day's work under this Act, and an Ontario land surveyor and a witness shall be entitled to the same compensation as if subpoenaed in a division court. Fees to fence-viewers, surveyors and witnesses.

(2) The corporation of the municipality shall, at the expiration of the time for appeal or after appeal as the case may be, pay to the fence-viewers their fees, and shall, unless the fees be forthwith repaid by the person adjudged to pay the same, place the amount upon the collector's roll as a charge against such person, and the same may be collected in the same manner as municipal taxes. R.S.O. 1937, c. 349, s. 12. Payment of fence-viewers' fees.

13.—(1) If the judge inspects the premises or hears the appeal at a place other than the county or district town he shall be entitled to be paid the actual expenses incurred by him and, in the order setting aside, altering or affirming the award, shall fix the amount of such expenses and name the person by whom the same is to be paid. Judge's expenses.

(2) The judge shall be paid by the corporation of the municipality the amount so fixed, and the same shall be collected in the same manner as is provided in respect to the fence-viewer's fees. R.S.O. 1937, c. 349, s. 13. Municipality to pay expenses and collect amount.

14. Any agreement in writing (Form 4) between owners respecting a line fence may be filed or registered and enforced as if it was an award of fence-viewers. R.S.O. 1937, c. 349, s. 14. Enforcement of agreements.

15.—(1) The owner of the whole or part of a line fence which forms part of the fence enclosing the occupied or improved land of another person shall not take down or remove any part of such fence, Certain fences removable on notice.

- (a) without giving at least six months previous notice of his intention to the owner or occupant of the adjacent enclosure unless the last-mentioned owner or occupant, after demand made upon him in writing by the owner of the fence, refuses to pay therefor the sum determined as provided by section 6; or
- (b) if such owner or occupant will pay to the owner of the fence or part thereof such sum as the fence-viewers may award to be paid therefor under section 6.

Other provisions of Act to apply.

(2) The provisions of this Act for determining disputes between the owners of adjoining occupied lands, the manner of enforcing awards and appeals therefrom and the forms and all other provisions of this Act, so far as applicable, shall apply to proceedings under this section. R.S.O. 1937, c. 349, s. 15.

Where tree thrown down across a line fence.

16.—(1) If any tree is thrown down by accident or otherwise across a line fence, or in any way in and upon the land adjoining that upon which the tree stood, causing damage to the crop upon such land or to such fence, the owner or occupant of the land on which the tree stood shall remove it forthwith, and also forthwith repair the fence and otherwise make good any damage caused by the falling of the tree.

When injured party may remove tree.

(2) On his neglect or refusal so to do for 48 hours after notice in writing to remove the tree the injured person may remove it in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain the tree to remunerate him for such removal, and may also recover any further amount of damages beyond the value of the tree from the person liable to pay it.

Right of entry.

(3) For the purpose of such removal the owner of the tree may enter into and upon the adjoining land doing no unnecessary spoil or waste.

Fence-viewers to decide disputes.

(4) All questions arising under this section shall be adjusted by three fence-viewers of the municipality, the decision of any two of whom shall be binding upon the parties. R.S.O. 1937, c. 349, s. 16.

FORM 1

(Section 3)

NOTICE TO OPPOSITE PARTY

Take notice that, and
....., three fence-viewers of this locality, will attend
on the day of, 19....., at the
hour of, to view and arbitrate upon the line fence
in dispute between our lands, being lots (*or* parts of lots) *one* and *two* in
the concession of the township of in
the county of

Dated the day of, 19.....

A. B.,

Owner of lot 1.

To C. D.,

Owner of lot 2.

R.S.O. 1937, c. 349, Form 1.

FORM 2

(Section 3)

NOTICE TO FENCE-VIEWERS

Take notice that I require you to attend at on the
..... day of, 19....., at
o'clock a.m., to view and arbitrate on the line fence between my land and
that of, being lots (*or* parts of lots) Nos.
one and *two* in the concession of the township of
in the county of

Dated the day of, 19.....

A. B.,

Owner of lot 1.

To

Fence-viewers.

R.S.O. 1937, c. 349, Form 2.

FORM 3

(Section 6)

AWARD

We, the fence-viewers of (*name of the locality*), having been nominated to view and arbitrate upon the line fence between of (*name and description of owner who notified*) and (*name and description of owner notified*), which fence is to be made and maintained between (*describe land*), and having examined the land and duly acted according to *The Line Fences Act*, award as follows: That part of the line which commences at and ends at (*describe the points*) shall be fenced, and the fence maintained by and that part thereof which commences at and ends at (*describe the points*) shall be fenced, and the fence maintained by The fence shall be of the following description (*state the kind of fence, height, material, etc.*), and shall cost at least per rod. The work shall be commenced within days and completed within days from this date, and the costs shall be paid by (*state by whom to be paid; if by both, in what proportion*).

Dated the day of, 19.....

(Signatures of fence-viewers)

Witnesses:

R.S.O. 1937, c. 349, Form 3.

FORM 4

(Section 14)

AGREEMENT

We, and, owners respectively of lots (*or parts of lots*) *one* and *two* in the concession of the township of, in the county of, do agree that the line fence which divides our lands shall be made and maintained by us as follows: (*follow the same form as award*)

Dated the day of, 19.....

(Signatures of Parties)

Witnesses:

R.S.O. 1937, c. 349, Form 4.

CHAPTER 210

The Liquor Control Act

1. In this Act,

Interpre-
tation.

- (a) "beer" means any liquor obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops or of any similar products in drinkable water and containing more than two and one-half per cent by volume at 60 degrees Fahrenheit of absolute alcohol; R.S.O. 1937, c. 294, s. 1, cl. (b); 1944, c. 34, s. 1 (2).
- (b) "Board" means Liquor Control Board of Ontario;
- (c) "dentist" means a member of the Royal College of Dental Surgeons of Ontario registered under *The Dentistry Act* and holding a certificate of licence to practise dentistry; Rev. Stat., c. 92.
- (d) "druggist" means a pharmaceutical chemist registered and entitled to practise under *The Pharmacy Act*; Rev. Stat., c. 276. R.S.O. 1937, c. 294, s. 1, cls. (c-e).
- (e) "Government store" means store established by the Board under this Act for the sale of liquor or for the sale of beer only; R.S.O. 1937, c. 294, s. 1, cl. (f); 1946, c. 46, s. 1 (2).
- (f) "interdicted person" means a person to whom the sale of liquor is prohibited by order under this Act; R.S.O. 1937, c. 294, s. 1, cl. (g).
- (g) "judge" means the judge, junior judge or acting judge of a county or district court; R.S.O. 1937, c. 294, s. 156 (3).
- (h) "justice" means magistrate and where no magistrate is available includes two or more justices of the peace or any person having the power or authority of two or more justices; R.S.O. 1937, c. 294, s. 1, cl. (h).
- (i) "licence" means a licence issued by the Board to a brewer, distiller or producer of Ontario wine under this Act or the regulations; R.S.O. 1937, c. 294, s. 1, cl. (j); 1944, c. 34, s. 26.

- (j) "liquor" means any alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption which are intoxicating, and any liquor which contains more than two and one-half per cent by volume at 60 degrees Fahrenheit of absolute alcohol shall conclusively be deemed to be intoxicating, and includes wine and beer; R.S.O. 1937, c. 294, s. 1, cl. (k); 1944, c. 34, s. 1 (3).
- (k) "Minister" means the member of the Executive Council to whom for the time being is assigned the supervision of the administration of this Act and the regulations; R.S.O. 1937, c. 294, s. 1, cl. (l).
- (l) "Ontario wine" means wine produced from grapes or cherries grown in Ontario or the concentrated juice thereof and includes Ontario wine to which has been added herbs, water, honey, sugar or the distillate of Ontario wine; 1944, c. 34, s. 1 (4).
- (m) "package" means any container, bottle, vessel or other receptacle used for holding liquor; R.S.O. 1937, c. 294, s. 1, cl. (n).
- (n) "permit" means permit for the purchase of liquor, beer or wine issued by the Board; 1944, c. 34, s. 1 (5).
- (o) "physician" means legally qualified medical practitioner registered under *The Medical Act*;
- (p) "prescription" means memorandum in the form prescribed by the regulations, signed by a physician, and given by him to a patient for the purpose of obtaining liquor pursuant to this Act for use for medicinal purposes only;
- (q) "public place" means any place, building or convenience to which the public has, or is permitted to have, access, and includes any highway, street, lane, park or place of public resort or amusement;
- (r) "regulations" means regulations made under this Act;
- (s) "residence" means any building or part of a building or tent in which a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence, nor any part of an hotel or club other than a private guest room

thereof, nor any place from which there is access to a club or hotel except through a street or lane or other open and unobstructed means of access; R.S.O. 1937, c. 294, s. 1, cls. (p-t).

(t) "sale" and "sell" include exchange, barter and traffic, and also includes selling, supplying or distributing, by any means whatsoever, of liquor or of any liquid known or described as beer by any partnership, or by any society, association or club, whether incorporated or unincorporated, and whether heretofore or hereafter formed or incorporated, to any partnership, society, association or club or to any member thereof; R.S.O. 1937, c. 294, s. 1, cl. (u); 1944, c. 34, s. 1 (6).

(u) "veterinary" means a person authorized to practise veterinary science under *The Veterinary Science Practice Act*; Rev. Stat.,
c. 409.

(v) "wine" means any liquor obtained by the fermentation of the natural sugar contents of fruits, including grapes, apples and other agricultural products containing sugar, and including honey and milk. R.S.O. 1937, c. 294, s. 1, cls. (v, w).

ADMINISTRATION

2. There shall be a Board known as The Liquor Control Board of Ontario consisting of one, two or three members as may be determined from time to time by the Lieutenant-Governor in Council, with the powers and duties herein specified, and the administration of this Act and the regulations, including the general control, management and supervision of all Government liquor stores shall be vested in the Board. R.S.O. 1937, c. 294, s. 4. Establish-
ment of
Board.

3. The Lieutenant-Governor in Council may designate one of the members of the Board to be chairman thereof who shall be known as the Chief Commissioner, and may designate any other member or any officer of the Board to be Deputy Chief Commissioner, and in case of a vacancy in the office, or of sickness or inability to act of the Chief Commissioner, the Deputy Chief Commissioner shall have and may exercise and perform all the powers, duties and functions of the Chief Commissioner. R.S.O. 1937, c. 294, s. 5. Chief
Commis-
sioner.

4. Notwithstanding anything in *The Legislative Assembly Act*, the appointment of the chairman or of any other member of the Board, if a member of the Assembly, shall not be avoided by reason of the payment to him or the acceptance Seat in
Assembly
not vacated.
Rev. Stat.,
c. 202.

by him of any salary or other remuneration under this Act, nor shall he thereby vacate or forfeit his seat or incur any of the penalties imposed by that Act for sitting and voting as a member of the Assembly. 1939, c. 26, s. 1.

Appoint-
ment,
quorum and
salaries of
the Board.

5. The Lieutenant-Governor in Council shall,

- (a) appoint the member or members of the Board;
- (b) specify what member or members shall constitute a quorum of the Board;
- (c) fix the salaries of the members of the Board. R.S.O. 1937, c. 294, s. 6.

Principal
office.

6. The principal office of the Board shall be at Toronto. R.S.O. 1937, c. 294, s. 7.

Chief Com-
missioner's
duties and
powers.

7. The Chief Commissioner shall have charge of the officers, inspectors, clerks and servants of the Board who shall be responsible to him in the first instance. R.S.O. 1937, c. 294, s. 8.

Authen-
tication of
regula-
tions.

8. No regulation of the Board shall be valid or binding unless it is assented to by the Chief Commissioner or in his absence by such member or official of the Board as the Lieutenant-Governor in Council may designate. R.S.O. 1937, c. 294, s. 9.

Power and
duties of
Board.

9. It shall be the duty of the Board and it shall have power,

import
and sale;

- (a) to buy, import and have in its possession for sale, and to sell liquor in the manner set forth in this Act and the regulations;

control;

- (b) to control the possession, sale, consumption, transportation and delivery of liquor in accordance with this Act and the regulations;

location
of stores;

- (c) to determine the municipalities within which Government liquor stores shall be established, and the situation of the stores in any municipality;

provision
for ware-
houses;

- (d) to make provision for the maintenance of warehouses for beer, wine or liquor and to control the keeping in and delivery of or from any such warehouses;

grant, etc.,
permits;

- (e) to grant, refuse, suspend or cancel permits for the purchase of liquor;

- (f) to lease any land or building required for the purposes of this Act and the regulations; leasing premises;
- (g) to purchase or lease or acquire the use by any manner whatsoever of any plant or equipment which may be considered necessary or useful in carrying into effect the object and purposes of this Act and the regulations; acquisition of plant, etc.;
- (h) to engage the services of experts and persons engaged in the practice of any profession where it is deemed expedient; expert advice;
- (i) to appoint officials to issue and grant permits under this Act and the regulations; appointment of officials to issue permits;
- (j) to determine the nature, form and capacity of all packages to be used for containing liquor to be kept or sold under this Act and the regulations; packages;
- (k) to appoint one or more vendors of sacramental wines in any municipality and to regulate or restrict the keeping for sale, sale and delivery of such wine; vendors of sacramental wines;
- (l) without in any way limiting or being limited by the foregoing clauses generally to do all such things as may be deemed necessary or advisable by the Board for the purpose of carrying into effect this Act and the regulations. R.S.O. 1937, c. 294, s. 10. general.

10.—(1) The Board with the approval of the Lieutenant-Governor in Council may make such regulations as the Board may deem necessary for carrying out this Act and for the efficient administration thereof. R.S.O. 1937, c. 294, s. 11 (1); 1946, c. 46, s. 2 (1). Regulations.

(2) Without limiting the generality of subsection 1, the powers of the Board to make regulations in the manner set out in that subsection shall extend to and include,

- (a) regulating the equipment and management of Government stores and warehouses in which liquor may be kept or sold; regulating equipment;
- (b) prescribing the duties of the officers, inspectors, clerks and servants of the Board and regulating their conduct while in the discharge of their duties; duties of employees;
- (c) governing the purchase of liquor and the furnishing of liquor to Government stores; purchase of liquor;
- (d) determining the classes, varieties and brands of liquor to be kept for sale at Government stores; varieties of liquor;

- hours for sale; (e) prescribing the days and hours at which Government stores or any of them shall be kept open;
- price lists; (f) providing for the issue and distribution of price lists showing the price to be paid for each class, variety or brand of liquor kept for sale in Government stores;
- books of account and records of sales; (g) prescribing the books of account to be kept by the Board showing the expenditure of the Board in the administration of this Act and the regulations and in the purchase, sale and delivery of liquor and the receipts of the Board from the sale of liquor in Government stores or from the issue of permits for the purchase of liquor;
- official seal; (h) prescribing an official seal and official labels and determining the manner in which the seal or label shall be attached to every package of liquor sold or sealed under this Act or the regulations, including the prescribing of different official seals or different official labels for the different classes, varieties and brands of liquor;
- forms, conditions of licences, etc.; (i) prescribing forms to be used for the purposes of this Act or the regulations, and the terms and conditions in permits and licences issued and granted under this Act and the regulations;
- duplicate permits; (j) prescribing the nature of the proof to be furnished and the conditions to be observed in the issuing of duplicate permits in lieu of those lost or destroyed; R.S.O. 1937, c. 294, s. 11 (2), cls. (a-j).
- quantities of liquors, etc.; (k) prescribing the kinds and quantities of liquor that may be sold or purchased under permits or under licences under *The Liquor Licence Act*, including the quantity that may be sold or purchased at any one time or within any specified period of time and the alcoholic content of any such liquor; R.S.O. 1937, c. 294, s. 11 (2), cl. (k); 1946, c. 46, s. 9.
- Rev. Stat., c. 211.
- records of purchases by holders of permits; (l) prescribing the forms of records of purchases of liquor by the holders of permits, and the reports to be made thereon to the Board, and providing for inspection of the records to be kept;
- notices; (m) prescribing the manner of giving and serving notices required by this Act or the regulations; R.S.O. 1937, c. 294, s. 11 (2), cls. (l, m).
- duties of officials authorized to issue permits; (n) prescribing the duties of officials authorized to issue permits under this Act or the regulations; R.S.O. 1937, c. 294, s. 11 (2), cl. (n); 1944, c. 34, s. 3 (1).

(o) prescribing the fees payable in respect of permits and fees; licences issued under this Act, and prescribing the tax, fees and assessments payable by any brewer, distiller or producer of Ontario wine; R.S.O. 1937, c. 294, s. 11 (2), cl. (o); 1944, c. 34, s. 26; 1946, c. 46, s. 2 (2).

(p) prescribing the books, records and returns to be kept books, etc; by the holder of any licence for the sale of liquor under this Act;

(q) supervising the distribution of supplies and the manner in which liquor may be kept and stored; distribution and storage;

(r) supervising the hours and days upon which, and the manner, methods and means by which vendors and brewers shall deliver liquor under this Act or the regulations and the hours and days during which, and the manner, methods and means by which liquor, under this Act or the regulations, may be lawfully conveyed and carried; R.S.O. 1937, c. 294, s. 11 (2), cls. (p-r); delivery and conveyance of liquor;

(s) governing the sale to and purchase by holders of licences under *The Liquor Licence Act* of liquor for sale upon premises licenced under *The Liquor Licence Act*; 1946, c. 46, s. 2 (3); governing sale of liquor; Rev. Stat., c. 211.

(t) governing the conduct, management and equipment of any premises upon which liquor may be sold or consumed under this Act or the regulations; conduct of premises;

(u) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1937, c. 294, s. 11 (2), cls. (t, u); in general.

11. Wherever it is provided in this Act that any act, matter or thing may be done or permitted or authorized by the regulations, or may be done in accordance with the regulations, or as provided by the regulations, the Board, subject to the restrictions set out in subsection 1 of section 10 shall have the power to make regulations respecting such act, matter or thing. R.S.O. 1937, c. 294, s. 12. General.

12. The Board, with the approval of the Lieutenant-Governor in Council, may, Powers of Board,

(a) purchase any land or building and equip any building required for the purposes of this Act or the regulations and where deemed necessary purchase or acquire the purchase of property and output;

whole or any portion of the output or product of any manufacturer, distiller, brewery, plant or appliance in which liquor is manufactured or produced;

appoint-
ment of
officers and
staff.

- (b) appoint such officers, inspectors, vendors, servants and agents as the Board may deem necessary in the administration of this Act and the regulations and by regulation prescribe the terms of their employment, fix their salaries or remuneration and define their respective duties and powers. R.S.O. 1937, c. 294, s. 13.

Acquiring
land, etc.

13.—(1) Subject to the approval of the Lieutenant-Governor in Council, the Board,

- (a) shall have power to acquire by purchase, lease or in any other manner, or without the consent of the owner thereof to enter upon, take possession of, expropriate and use any land or property which it may deem necessary for its undertakings; and

- (b) shall have and may exercise and enjoy in addition to the powers conferred by this Act, all the powers conferred upon the Minister of Public Works in relation to a public work by *The Public Works Act* and in the application of this section where the words "the Minister", "the Department" or "the Crown" appear in such Act, they shall, where the context permits, mean the Board.

Rev. Stat.,
c. 323.

Mode of
perfecting
title.

(2) Upon the deposit in the proper registry or land titles office of a plan and description of the land acquired by the Board, signed by the chairman of the Board and by an Ontario land surveyor, the land so described shall thereupon become and be vested in the Board.

Procedure.

(3) Except as otherwise provided in this Act, the Board shall, in the exercise of its compulsory powers authorized by this section, proceed in the manner provided by *The Public Works Act* where the Minister of Public Works takes land or property for the use of Ontario, and all the provisions of that Act with respect to the fixing, payment and application of compensation shall apply *mutatis mutandis*.

Exercise of
powers not
to be
enjoined.

(4) No action or proceeding of the Board taken pursuant to this section shall be restrained by injunction or process or proceeding in any court. 1946, c. 46, s. 3.

Payment of
expenses.

14. All property, whether real or personal, all moneys acquired, administered, possessed or received by the Board and all profits earned in the administration of this Act and the

regulations, shall be the property of the Crown in right of Ontario, and all expenses, debts and liabilities incurred by the Board in connection with the administration of this Act and the regulations shall be paid by the Board from the moneys received by the Board under such administration. R.S.O. 1937, c. 294, s. 14.

15.—(1) The Board shall from time to time make reports to the Lieutenant-Governor in Council covering such matters in connection with the administration of this Act and the regulations as he may require, and shall make annually to the Lieutenant-Governor in Council, through the Minister, a report for the 12 months ending on the 31st day of March in the year in which the report is made, which shall contain,

Reports to
Lieutenant-
Governor in
Council.

- (a) a statement of the nature and amount of the business transacted by the vendors under this Act and the regulations during the year;
 - (b) a statement of the Board's assets and liabilities including a profit and loss account, and such other accounts and matters as may be necessary to show the results of its operations for the year;
 - (c) general information and remarks as to the working of this Act and the regulations;
 - (d) any other information requested by the Minister.
- R.S.O. 1937, c. 294, s. 15 (1); 1938, c. 37, s. 13.

(2) Every annual report made under this section shall be laid forthwith before the Legislature if the Legislature is then in session, and if not then in session shall be laid before the Legislature within 15 days after the opening of the session following the close of the fiscal year. R.S.O. 1937, c. 294, s. 15 (2).

Report to be
presented to
Legisla-
ture.

16. The books and records of the Board shall at all times be subject to examination and audit by the provincial Auditor and by such other person as the Lieutenant-Governor in Council may authorize in that behalf. R.S.O. 1937, c. 294, s. 15 (3).

Audit of
books of
Board.

17. The Treasurer of Ontario may set aside out of the Consolidated Revenue Fund such sums as he deems necessary and requisite for the purchase of liquor by the Board, and for other necessary purposes in the administration of this Act and the regulations. R.S.O. 1937, c. 294, s. 16.

Treasurer
of Ontario
to provide
necessary
funds.

Payment of
salaries,
expenses
of stores.

18. The Board shall make all payments necessary for its administration of this Act and the regulations, including the payment of the salaries of the members of the Board and its staff and all expenditures incurred in establishing and maintaining Government stores and in its administration of this Act and the regulations. R.S.O. 1937, c. 294, s. 17.

Moneys from
liquor sales.

19. All moneys received from the sale of liquor at Government stores and from licence and permit fees, or otherwise arising in the administration of this Act and the regulations shall be paid to the Board. 1944, c. 34, s. 4.

Accounts
payable by
Board.

20. All accounts payable by the Board shall be audited by such person as may be designated by the Board and may be audited by the provincial Auditor, and all cheques for payment of accounts shall be signed by the Chief Commissioner or by such other officer as may be designated by the Board for that purpose. R.S.O. 1937, c. 294, s. 19.

Fiscal year.

21. The accounts of the Board shall be made up to the 31st day of March in each year, and at such other times as may be determined by the Lieutenant-Governor in Council, and in every case the Board shall prepare a balance sheet and statement of profit and loss and submit the same to the provincial Auditor for his certification. R.S.O. 1937, c. 294, s. 20; 1938, c. 37, s. 13.

Annual
audit.

22. The accounts of the Board shall be audited annually by the provincial Auditor or by such other person, firm or corporation as the Lieutenant-Governor in Council may appoint, and the report of such auditor containing such particulars as the Lieutenant-Governor in Council may require shall be made to the Lieutenant-Governor in Council on or before the 1st day of January next following the close of the fiscal year for which the report is made. R.S.O. 1937, c. 294, s. 21.

Reserve
fund, etc.

23. From the profits received under this Act and the regulations as certified by the auditor there shall be taken such sums as may be determined by the Lieutenant-Governor in Council for the creation of a reserve fund to meet any loss that may be incurred by the Government in connection with the administration of this Act and the regulations. R.S.O. 1937, c. 294, s. 22.

Audit of
receipts.

24. The receipts of the Board from all sources shall be checked and audited at least once in every calendar month

by the provincial Auditor or such other person as may be designated by the Lieutenant-Governor in Council. R.S.O. 1937, c. 294, s. 23.

25. The net profits of the Board shall be paid into the Net profits. Consolidated Revenue Fund at such times and in such manner as the Lieutenant-Governor in Council may direct. R.S.O. 1937, c. 294, s. 24.

26. Every vendor and every official authorized by the Adminis-
tration of
oaths. Board to issue permits under this Act or the regulations may administer any oath and take and receive any evidence or declaration required under this Act or the regulations. R.S.O. 1937, c. 294, s. 25; 1944, c. 34, s. 5.

27.—(1) Except with the consent of the Minister, no action Actions
against
members of
Board, etc. or proceeding shall be taken against any member or members or against any official or vendor of the Board for anything done or omitted to be done in or arising out of the performance of his or their duties under this Act or the regulations.

(2) Every action, order or decision of the Board as to any matter or thing in respect of which any power, authority or discretion is conferred on the Board under this Act or the Orders of
Board not
subject to
review. regulations shall be final and shall not be questioned, reviewed or restrained by injunction, prohibition or mandamus or other process or proceeding in any court or be removed by *certiorari* or otherwise in any court. R.S.O. 1937, c. 294, s. 26.

(3) The Board may, with the consent of the Attorney- Board may
be sued and
sue. General, be sued and may institute or defend proceedings in any court of law or otherwise in the name of The Liquor Control Board of Ontario as fully and effectually to all intents and purposes as though the Board were incorporated under such name or title and no such proceedings shall be taken against or in the names of the members of the Board, and no such proceedings shall abate by reason of any change in the membership of the Board by death, resignation or otherwise, but such proceedings may be continued as though such changes had not occurred. R.S.O. 1937, c. 294, s. 27.

28.—(1) Every order for the purchase of liquor shall be Orders for
purchase of
liquor. authorized by the Chief Commissioner or Deputy Chief Commissioner and no order shall be valid or binding unless so authorized.

(2) A duplicate of every such order shall be kept on file in Filing
duplicate. the office of the Board.

Cancelling
orders.

(3) All cancellations of such orders made by the Board shall be executed in the same manner and a duplicate thereof kept as aforesaid. R.S.O. 1937, c. 294, s. 28.

Security for
observance
of Act.

29. Subject to the regulations, the Board may require the holder of any licence for the sale of liquor to give such security and to comply with such other provisions as the Board may deem necessary or desirable in order to secure the due observance of this Act and the regulations. R.S.O. 1937, c. 294, s. 29.

Board not
compellable
to issue
permits, etc.

30. Notwithstanding anything in this Act or the regulations, the Board shall not be compellable to issue any permit or licence under this Act or the regulations, and may refuse, suspend or cancel any such permit or licence in its discretion, and shall not be obliged to give any reason or explanation for such refusal, suspension or cancellation. 1944, c. 34, s. 6.

ESTABLISHMENT OF GOVERNMENT STORES AND SALES UNDER PERMITS

Government
stores.

Rev. Stat.,
c. 211.

31.—(1) Government stores may be established by the Board in accordance with this Act and the regulations and *The Liquor Licence Act* and the regulations thereunder.

Prices set.

(2) The Board may fix the prices at which the various classes, varieties and brands of liquor are to be sold, and, except in the case of beer, such prices shall be the same at all Government stores. 1946, c. 46, s. 4.

Vendors.

32. The sale of liquor at each Government store shall be conducted by a person appointed under this Act to be known as a vendor who shall, under the directions of the Board, be responsible for the carrying out of this Act and the regulations so far as they relate to the conduct of such store and the sale of liquor thereat. R.S.O. 1937, c. 294, s. 32.

Sale of
liquor to
holder of
permit.

33.—(1) A vendor may sell to any person who is the holder of a subsisting permit, such liquor as that person is entitled to purchase under such permit in conformity with this Act and the regulations.

Conditions
upon which
sale may be
made.

(2) Except as provided by the regulations, no liquor sold under this section shall be delivered until,

- (a) the purchaser has given a written order to the vendor, dated and signed by the purchaser and stating the number of his permit and the kind and quantity of the liquor ordered; and

- (b) the purchaser has produced his permit for inspection and endorsement by the vendor; and
- (c) the purchaser has paid for the liquor in cash; and
- (d) the vendor has endorsed or caused to be endorsed on the permit the kind and quantity of the liquor sold and the date of the sale. R.S.O. 1937, c. 294, s. 33.

34. Except as provided by this Act and the regulations, no liquor shall be sold to any purchaser except in a package sealed with the official seal as prescribed by this Act or the regulations and such package shall not be opened on the premises of a Government store. R.S.O. 1937, c. 294, s. 34. Sealing of package.

35. No officer, clerk or servant of the Board employed in a Government store shall allow any liquor to be consumed on the premises of a Government store nor shall any person consume any liquor on such premises. R.S.O. 1937, c. 294, s. 35. Consumption in Government store.

36. No sale or delivery of liquor shall be made on or from the premises of any Government store nor shall any store be kept open for the sale of liquor, Days and hours for sale.

- (a) on any holiday;
- (b) on any day on which polling takes place at any federal or provincial election held in the electoral district in which the store is situated;
- (c) on any day on which polling takes place at any municipal election held in the municipality in which the store is situated or upon any question submitted to the electors of the municipality under any Act of the Legislature; or
- (d) during such other periods or on such other days as the Board may direct. R.S.O. 1937, c. 294, s. 36.

37. It shall be lawful to carry or convey liquor to any Government store and to and from any warehouse or depot established by the Board for the purpose of this Act and the regulations, and when permitted so to do by this Act and the regulations and in accordance herewith, it shall be lawful for any common carrier, or other person, to carry or convey liquor sold by a vendor from a Government store, or beer, when lawfully sold by the Board or a vendor, from the premises wherein the beer was manufactured, or from premises where the beer may be lawfully kept and sold, to any place in Ontario to which the beer may be lawfully delivered under this Act Delivery of liquor to and from Government store.

and the regulations, provided that no such common carrier or any other person shall open, or break, or allow to be opened or broken, any package or vessel containing liquor, or drink, or use, or allow to be drunk or used, any liquor therefrom while being so carried or conveyed. R.S.O. 1937, c. 294, s. 37.

Classes of permits.

38.—(1) The Board may issue two classes of permits under this Act and the regulations for the purchase of liquor, namely,

(a) individual permits; and

(b) special permits.

Application and issue of permits.

(2) Upon application in the prescribed form being made to the Board or to any official authorized by the Board to issue permits accompanied by payment of the prescribed fee, and upon the Board or such official being satisfied that the applicant is entitled to a permit for the purchase of liquor under this Act and the regulations the Board or such official may issue to the applicant a permit of the class applied for, as follows:

Individual permits for residents.

1. An individual permit in the prescribed form may be granted to any individual of the full age of 21 years who has resided in Ontario for the period of at least one month immediately preceding the date of his making the application and who is not disqualified under this Act or the regulations, entitling the applicant to purchase liquor in accordance with the terms of the permit and the provisions of this Act and the regulations.

Individual permits for non-residents.

2. An individual permit in the prescribed form may be granted to any individual of the full age of 21 years who is temporarily resident or sojourning in Ontario and who is not disqualified under this Act or the regulations, entitling the applicant during a period not exceeding one month to purchase liquor in accordance with the terms of the permit and the provisions of this Act and the regulations.

Special permits for physicians, etc.

3. A special permit in the prescribed form may be granted to a druggist, physician, dentist or veterinary or to a person engaged within Ontario in any mechanical or manufacturing business, or in scientific pursuits, requiring liquor for use therein, entitling the applicant to purchase liquor for the purpose named in such permit and in accordance with the terms of such permit and in accordance with the provisions of this Act and the regulations.

4. A special permit in the prescribed form may be granted to a priest, minister of the gospel, or any other minister of any religious faith authorized to solemnize marriage in Ontario, entitling the applicant to purchase wine for sacramental purposes in accordance with the terms of the special permit. Special permits for ministers.

5. A special permit in the prescribed form may be granted when authorized by the regulations, entitling the applicant to purchase liquor for the purpose named in the permit and in accordance with the terms of such permit and of this Act and the regulations. Special permits under regulations.

(3) No person who has been convicted of keeping, frequenting or being an inmate of a disorderly house shall be entitled to a permit until after the expiration of at least one year from the date of such conviction. Prohibition as to disorderly houses.

(4) Notwithstanding any other provision of this Act or the regulations, the Board may refuse or direct any official authorized to issue permits to refuse to issue a permit to any person and no official so directed shall issue any such permit. Discretion as to permits.

(5) Notwithstanding the provisions of this Act and the regulations providing for the purchase, having, possession and consumption of liquor upon a permit the Board may provide that beer or wine may be purchased, had, possessed and consumed without any permit therefor being necessary for such time and upon and subject to such conditions and restrictions as the regulations may prescribe, and when and during the time the purchase, having, possession and consumption of beer or wine is authorized without any permit therefor being necessary, every provision of this Act and the regulations relating to the purchasing, having, possessing and consuming of liquor under a permit shall be construed with due regard to the fact that the purchase, having, possession and consumption of beer or wine may be made and had without such permit. R.S.O. 1937, c. 294, s. 38. Board may authorize purchase of beer and wine without permit.

39. Unless sooner cancelled, every permit shall expire at midnight on the 31st day of March of the year in respect to which it is issued, except in the case of, Expiry of permits.

(a) special permits issued under class 5 of subsection 2 of section 38, which shall expire in accordance with the terms contained therein;

(b) a permit which, according to its terms, sooner expires. R.S.O. 1937, c. 294, s. 39; 1938, c. 37, s. 13,

Issue of
permit.

40. Every permit shall be issued in the name of the applicant therefor and no permit shall be transferable nor shall the holder of any permit allow any other person to use the permit. R.S.O. 1937, c. 294, s. 40.

Restrictions as to
number.

41. No permit shall be delivered to the applicant until he has, in the presence of some person duly authorized by the Board or in the presence of the official to whom the application is made, written his signature thereon in the manner prescribed by the regulations for the purpose of his future identification as the holder thereof and the signature has been attested by a member of the Board or other official authorized to issue the same. R.S.O. 1937, c. 294, s. 41.

Restrictions as to
issue.

42. No person who is the holder of an unexpired individual permit under this Act or the regulations shall make application for or be entitled to hold any other individual permit whether of the same or another class; provided that the holder of a subsisting individual permit may, without any claim to or for rebate, return such permit to the Board or official authorized to issue permits and then be entitled to make application for a permit under this Act or the regulations, and any person whose permit has been lost or destroyed may apply to the Board or other official by whom the permit was issued, and upon proof of the loss or destruction of the permit and subject to the conditions contained in the regulations, may obtain a duplicate permit in lieu of the permit so lost or destroyed for which duplicate permit a fee of 50 cents shall be paid. R.S.O. 1937, c. 294, s. 42.

Place where
liquor may
be kept.

Rev. Stat.,
c. 211.

43.—(1) Liquor may be kept, had, given or consumed by a person only in the residence in which he resides, except as otherwise provided by *The Liquor Licence Act* or this Act or the regulations under this Act or that Act. 1944, c. 34, s. 8; 1946, c. 46, s. 9.

Disqualifi-
cation of
premises on
conviction.

(2) If the occupant of a residence or of any part thereof, including the rooms of any lodgers, boarders or tenants therein, or any member of the family of such occupant is convicted of keeping a disorderly house or of an offence against any of the provisions of this Act or the regulations committed in or in respect of such residence or rooms, or in respect of any liquor kept therein or removed therefrom, the justice making the conviction may in and by the conviction, declare such residence or the rooms of such lodgers, boarders or tenants therein or both to be a public place for the purposes of this Act and the regulations and such residence or rooms or both shall cease to be a residence within the meaning of this Act and the regulations for a period of one year after the date of

such conviction; provided that the Board may when satisfied of a *bona fide* change of ownership or occupation of such residence or rooms or both, or when it is desirable to do so, declare such residence or rooms or both to be a residence within the meaning of this Act and the regulations and may grant a certificate to such effect to the new owner or occupant of such residence or rooms or both and such residence or rooms or both shall from the date of the granting of such certificate, signed by the Chief Commissioner or Deputy Chief Commissioner of the Board, be a residence and cease to be a public place within the meaning of this Act and the regulations. R.S.O. 1937, c. 294, s. 43 (2).

44.—(1) Notwithstanding anything in this Act and the regulations, the Board may for any cause that it deems sufficient with or without any hearing cancel or suspend any permit granted for the purchase of liquor under this Act and the regulations.

Cancellation of permits by Board.

(2) The justice before whom any holder of a permit issued under this Act or the regulations is convicted of a violation of any provision of this Act or of the regulations, may suspend the permit for a period not exceeding one month, and thereupon the justice shall forthwith notify the holder and the Board of the suspension of the permit.

Suspension of permit by justice.

(3) Upon receipt of notice of the suspension of his permit the holder of the permit shall forthwith deliver up the permit to the Board, and if the holder of a permit which has been suspended fails or neglects to deliver the same to the Board in accordance with the regulations, the Board may forthwith cancel the same.

Delivery up of permit on suspension.

(4) Where the permit has been suspended, the Board may return the permit to the holder at the expiration or determination of the period of suspension.

Return of permit on termination of suspension.

(5) Where a permit has been cancelled, the Board shall notify all vendors and such other persons as may be provided by the regulations of the cancellation of the permit, and the issue of a new permit to the person whose permit has been cancelled shall be in the discretion of the Board.

Notifying vendors of cancellation.

(6) Where a permit is produced at a Government store by a person who is not entitled under this Act or the regulations to hold such permit or produce the same at the store, or where any permit is suspended or cancelled, or a permit, a duplicate of which has been issued, is produced at a Government store, the vendor shall retain such permit in his custody and shall forthwith notify the Board of the fact of its retention, and the

Use of permit of other person or of a suspended or cancelled permit.

Board, unless such permit has been cancelled, may forthwith cancel the same; provided nevertheless that the proper holder of any lost subsisting permit which may be improperly produced as aforesaid may, upon satisfactory proof to the Board that he was not privy to such improper use, obtain a return of such permit.

Forfeiture
of liquor on
cancellation
of
permit.

(7) Notwithstanding anything in this Act and the regulations, where a permit granted for the purchase of liquor under this Act or the regulations is cancelled, all the liquor purchased under such permit and in the possession of the permit holder at the date of cancellation, shall *ipso facto* be forfeited to His Majesty in right of Ontario. R.S.O. 1937, c. 294, s. 44.

Persons to
whom
permits not
to be issued.

45. No permit shall be issued under this Act or the regulations to any person to whom the sale of intoxicants is prohibited under any Act of the Parliament of Canada. R.S.O. 1937, c. 294, s. 45.

Brewers'
licences.

46.—(1) The Board, with the approval of the Minister and subject to this Act and the regulations, may grant a licence to any brewer duly authorized under any Act of the Parliament of Canada authorizing the brewer or any lawfully appointed agent of the brewer,

- (a) to keep for sale and sell beer to the Board;
- (b) to deliver beer on the order of the Board or of a vendor to any person named in such order at the address therein stated;
- (c) to keep for sale and sell beer under the supervision and control of the Board and in accordance with this Act and the regulations.

Limitation
as to sale.

(2) No brewer or brewer's agent shall keep for sale, sell or deliver beer except as provided in this Act and the regulations.

Returns.

(3) Every brewer shall make to the Board in every month a return in the form which the Board provides showing the gross amount of the sales of beer made by him and his agents; provided that the Board may at any time by notice in writing to a brewer or brewer's agent require such a return of sales by a brewer or brewer's agent, as the case may be, for any period mentioned in such notice, and such return shall be made within three days of the receipt by such brewer or brewer's agent of such notice. R.S.O. 1937, c. 294, s. 46.

Penalty.

47. Every brewer who fails to make such returns to the Board within 20 days following the expiration of any calendar

month for which it should be made, shall be guilty of an offence and shall be liable to a penalty of \$20 per day for each day it is delayed, counting from the expiration of such 20 days. R.S.O. 1937, c. 294, s. 47.

48. Any brewer or brewer's agent who makes default in forwarding a return required by the proviso in subsection 3 of section 46 within the time required by a notice given pursuant to that proviso, shall be guilty of an offence and shall be liable to a fine of \$20 per day for each day during which such default continues. R.S.O. 1937, c. 294, s. 48. Default in forwarding.

49.—(1) The Board may also examine the books of any brewer or brewer's agent making or required to make any such return, or may otherwise verify the accuracy of any such return. Examination of books.

(2) Every brewer or brewer's agent who refuses to allow such examination or who fails to make returns in accordance with the regulations shall be guilty of an offence and shall be liable to a penalty of \$100 for each offence. R.S.O. 1937, c. 294, s. 49. Penalty for refusal.

50. No premises shall be constructed and equipped so as to facilitate any breach of this Act or the regulations. R.S.O. 1937, c. 294, s. 50. Construction and equipment of premises.

51. Every brewer shall from time to time as he may be required by the Board, furnish samples of his beer to be sold within Ontario, and the Board shall be entitled and is hereby authorized to require of any brewer samples of any beer then being sold within Ontario or in stock by the brewer or which may be in the course of manufacture for sale within Ontario, and the brewer shall forthwith furnish the same to the Board, and every brewer failing to do so shall be guilty of an offence and shall be liable to a penalty of not more than \$100. R.S.O. 1937, c. 294, s. 51. Furnishing of samples to Board.

52.—(1) The Board, with the approval of the Minister and subject to this Act and the regulations, may grant a licence to a distiller authorizing such distiller to keep for sale and sell liquor to the Board or as the Board may direct. Licences to distillers to sell to Board.

(2) The Board, with the approval of the Lieutenant-Governor in Council, may make regulations providing for the returns to be made to the Board by a distiller and governing the manner in which liquor may be sold, kept for sale or delivered by such distiller. Regulations.

Sales by
distiller.

(3) No distiller shall keep for sale, sell or deliver liquor except as provided by this Act or the regulations. R.S.O. 1937, c. 294, s. 52.

Term of
licence.

53. Every licence issued under this Act or the regulations, unless sooner cancelled or determined, shall expire at midnight on the 31st day of March next following the issue thereof. 1944, c. 34, s. 9.

Cancellation
of
brewer's or
distiller's
licence.

54. The Board may for any cause that it deems sufficient with or without any hearing, cancel or suspend any licence granted to a brewer or brewer's agent or to a distiller, in the manner prescribed by the regulations, and all right of the brewer or brewer's agent or distiller to sell or deliver liquor or beer thereunder shall be cancelled or suspended, as the case may be. R.S.O. 1937, c. 294, s. 54.

LIQUOR KEPT AND SOLD UNDER SPECIAL PERMITS

Possession
of alcohol
by druggists.

55. Any druggist may have in his possession alcohol purchased by him from a vendor under a special permit pursuant to this Act or the regulations, such alcohol to be used solely in connection with the business of the druggist in compounding medicines or as a solvent or preservative. R.S.O. 1937, c. 294, s. 55.

Sale and
keeping for
sale by
druggist.

56. Except as authorized or permitted by this Act or the regulations and in accordance therewith, nothing in this Act or in any Act, shall be construed as authorizing or permitting any druggist to have or keep for sale or by himself or his clerk, servant or agent, to sell any liquor. R.S.O. 1937, c. 294, s. 56.

Physicians.

57.—(1) Any physician who is lawfully and regularly engaged in the practice of his profession and who deems liquor necessary for the health of a patient of his whom he has seen or visited professionally may give to such patient a prescription therefor in the prescribed form, signed by the physician and addressed to a vendor, or the physician may administer the liquor to the patient for which purpose the physician shall administer only such liquor as was purchased by him under special permit pursuant to this Act or the regulations, and he may give to any such patient a prescription for liquor not exceeding six ounces, and supply or sell, subject to the regulations, the said liquor to his patient, and may charge for the liquor so administered or sold, but no prescription shall be given nor shall liquor be administered or sold by a physician except to a *bona fide* patient in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed, administered or sold is necessary.

(2) Every physician who gives any prescription or administers or sells any liquor in evasion or violation of this Act or the regulations, or who gives to or writes for any person a prescription for or including liquor for the purpose of enabling or assisting any person to evade any of the provisions of this Act or the regulations, or for the purpose of enabling or assisting any person to obtain liquor to be used as a beverage, or to be sold or disposed of in any manner in violation of this Act or the regulations, shall be guilty of an offence. R.S.O. 1937, c. 294, s. 57.

Giving prescriptions or administering liquor illegally.

58.—(1) A vendor may upon the prescription of a physician sell and supply for strictly medicinal purposes,

Sale of liquor by vendors on prescription.

(a) beer in quantities of not more than one dozen bottles, containing not more than three half-pints each or a quantity equivalent thereto at any one time;

(b) wines and distilled liquor not exceeding one quart at any one time;

(c) alcohol for rubbing or other necessary purposes not exceeding one pint at any one time.

(2) Every prescription issued under section 57 shall contain a certificate that the quantity of liquor therein mentioned is the minimum quantity necessary for the patient for whom it is ordered.

(3) No more than one sale and one delivery shall be made on any one prescription. R.S.O. 1937, c. 294, s. 58 (1), (2), (4).

(4) Any violation of this section shall be an offence. R.S.O. 1937, c. 294, s. 58 (3).

59. Any dentist who deems it necessary that any patient being then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor purchased by him under special permit pursuant to this Act or the regulations, and may charge for the liquor so administered, but no liquor shall be administered by a dentist except to a *bona fide* patient in case of actual need, and every dentist who administers liquor in evasion or violation of this Act or the regulations, shall be guilty of an offence. R.S.O. 1937, c. 294, s. 59.

Dentists.

60. Any veterinary who deems it necessary may in the course of his practice administer or cause to be administered liquor to any dumb animal, and for that purpose the veterinary

Veterinary surgeons.

shall administer or cause to be administered liquor purchased by him under special permit pursuant to this Act or the regulations, and may charge for the liquor so administered or caused to be administered, but no veterinary shall himself consume nor shall he give to or permit any person to consume as a beverage any liquor so purchased, and every veterinary who evades or violates or suffers or permits any evasion of this section shall be guilty of an offence. R.S.O. 1937, c. 294, s. 60.

Hospitals,
etc.

61. Any person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill-health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this Act or the regulations for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes, and may charge for the liquor so administered, but no liquor shall be administered by any person under this section except to *bona fide* patients or inmates of the institution of which he is in charge and in cases of actual need, and every person in charge of an institution or employed therein, who administers liquor in evasion or violation of this Act or the regulations shall be guilty of an offence. R.S.O. 1937, c. 294, s. 61.

APPLICATION OF ACT

Federal
licences.

62.—(1) Nothing in this Act shall prevent any brewer, distiller or other person duly licensed under any Act of the Parliament of Canada for the manufacture of liquor from having or keeping liquor in a place and in the manner authorized by or under any such Act.

Sales to
Board.

(2) Nothing in this Act shall prevent,

- (a) the sale of liquor by any person to the Board;
- (b) the purchase, importation and sale of liquor by the Board for the purposes of and in accordance with this Act and the regulations. R.S.O. 1937, c. 294, s. 62.

Patent or
proprietary
medicines.

63. Except as otherwise provided by this Act or the regulations, a druggist or manufacturer of patent or proprietary medicine may sell such medicine in the original and unbroken package if such medicine contains sufficient medication to prevent its use as an alcoholic beverage. R.S.O. 1937, c. 294, s. 63.

64.—(1) Except as otherwise expressly provided by this Act or the regulations, nothing in this Act shall prevent the sale, Certain tinctures, medicines, perfumes, etc.

- (a) by a druggist or by the manufacturer of,
 - (i) any tincture, fluid extract, essence or medicated spirit containing alcohol prepared according to a formula of the British Pharmacopœia or other recognized standard work on pharmacy, or
 - (ii) medicine or other similar officinal or pharmaceutical compound or preparation, or
 - (iii) a perfume, lotion, toilet water or other similar preparation, or
 - (iv) for purely medicinal purposes, any mixture so prepared containing alcohol and other drugs or medicine; nor
- (b) by a merchant who deals in drugs and medicines, of such compounds, mixtures and preparations as are in this section hereinbefore mentioned and are so made or put up by a druggist or manufacturer,

by reason only that the same contain alcohol, but this shall only apply to any such compound, mixture and preparation as contains sufficient medication to prevent its use as an alcoholic beverage. R.S.O. 1937, c. 294, s. 64 (1); 1944, c. 34, s. 10.

(2) If in any prosecution for selling any product mentioned in section 63, or this section, the justice hearing the complaint is of opinion that an unreasonable quantity of any such product, having regard to the purposes for which it was legitimately manufactured, was sold or otherwise disposed of to any person either at one time or at intervals and proof is also given that it was used for beverage purposes, the person selling or otherwise disposing of it may be convicted of an offence under subsection 1 of section 69. R.S.O. 1937, c. 294, s. 64 (2). Unreasonable quantity.

65.—(1) Every person who obtains or consumes for beverage purposes any of the products mentioned in section 63 or 64 or any preparation containing alcohol which has been denatured in accordance with *The Excise Act, 1934* (Canada) and the regulations made thereunder, shall be guilty of an offence and liable to the penalties prescribed by subsection 4 of section 104. 1944, c. 34, s. 11. Penalty for using certain products as beverages. 1934, c. 52, (Can.).

Sale of
alcoholic
compounds
prohibited.

(2) Except as otherwise expressly provided in this Act or the regulations, no person shall have in his possession, sell or keep for sale any compound, mixture or preparation whether in solid or liquid form to which the addition of water or any other liquid or any substance will produce intoxicating liquor. R.S.O. 1937, c. 294, s. 65 (2).

Colour-
able sales.

66.—(1) Where the justice before whom a complaint is heard finds that any patent or proprietary medicine mentioned or referred to in section 63 or any other medicine, preparation or mixture mentioned or referred to in section 64 does not contain sufficient medication to prevent it being used as an alcoholic beverage, the offender shall be liable to the penalties that may be imposed in the case of sale of liquor contrary to subsection 1 of section 69.

Charging
the offence.

(2) It shall not be necessary in the information, summons, warrant, distress warrant, commitment or other process or proceeding, except the finding or judgment, to set out that such patent or other medicine, preparation or mixture does not contain sufficient medication to prevent the same being used as an alcoholic beverage, but it shall be sufficient if the complaint and all other necessary statements of the offence allege or refer to the sale of liquor in contravention of this Act.

Analysis of
patent or
proprietary
medicines.

(3) The Department of Health, on complaint being made to it that any patent or proprietary medicine or other medicine, preparation or mixture is believed not to contain sufficient medication to prevent its use as an alcoholic beverage, may cause an analysis of such patent or proprietary medicine or other medicine, preparation or mixture to be made by some competent person, and if it be proved to the satisfaction of the Department that such patent or proprietary medicine or other medicine, preparation or mixture contains more than one per cent by volume at 60 degrees Fahrenheit of absolute alcohol and that the medication found therein is not sufficient to prevent its use as an alcoholic beverage, the Department shall certify accordingly, and such certificate signed or purporting to be signed by the Minister or Deputy Minister of Health shall be conclusive evidence of such insufficiency of medication in all subsequent proceedings until the manufacturer of such patent or proprietary medicine or other medicine, preparation or mixture demonstrates to the satisfaction of the Department that sufficient medication to prevent its use as an alcoholic beverage is contained in such patent or proprietary medicine or other medicine, preparation or mixture, and the Department so certifies.

(4) If the Department should find and certify by certificate signed or purported to be signed as provided by subsection 3 that the patent or proprietary medicine or other medicine, preparation or mixture contains any medication which, owing to the alcoholic properties of such patent or proprietary medicine or other medicine, preparation or mixture, would be liable to be taken in quantities injurious to health, the sale of such patent or proprietary medicine or other medicine, preparation or mixture, after a copy of such certificate has been published in two consecutive issues of *The Ontario Gazette*, shall be an offence, and any person on conviction therefor shall be liable to the penalties provided by subsection 1 of section 105, unless the same has been so sold upon the written order of a medical practitioner.

Sale after report of Department against preparation analysis.

(5) On any inquiry under this section any interested party may be heard either personally, or by counsel or solicitor, by the Department before any certificate is issued. R.S.O. 1937, c. 294, s. 66.

Right to be heard by Department.

67.—(1) A druggist or other person who keeps patent or proprietary medicines for sale shall, upon request made by the inspector or other person authorized by the Board, permit such inspector or other person to take away a sample sufficient for the purpose of analysis of any patent or proprietary medicine kept by him for sale.

Analysis of patent medicines kept by druggist.

(2) Every person who refuses to comply with such a request shall be guilty of an offence and shall be liable to a penalty of not less than \$10 and not more than \$40. R.S.O. 1937, c. 294, s. 67.

Penalty.

68.—(1) Every brewer shall on all beer manufactured and bottled by him for sale or consumption within Ontario, place a crown cork stopper or other stopper showing thereon by embossing or lithographing on the outside thereof the name of the brewer and such other information as to the contents or otherwise as the Board may from time to time require and shall also cause the same information to be branded in or labelled on all casks, barrels, kegs or other vessels containing such beer as the Board may determine. R.S.O. 1937, c. 294, s. 68 (1); 1944, c. 34, s. 12; 1947, c. 57, s. 3.

Brewers' marks.

(2) Every brewer who violates the provisions of this section shall be guilty of an offence and shall be liable to a penalty of \$2,000. R.S.O. 1937, c. 294, s. 68 (2).

Penalty.

PROHIBITIONS, INTERDICTION, PENALTIES AND PROCEDURE IN PROSECUTIONS AND ON APPEAL

Selling, etc.,
liquor
otherwise
than under
Act.

69.—(1) Except as provided by this Act or the regulations, no person shall by himself, his clerk, servant or agent, expose, or keep for sale, or directly or indirectly or upon any pretence, or upon any device, sell or offer to sell liquor, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give liquor to any other person.

Possession.

(2) Except as expressly provided by this Act or the regulations, no person shall have or keep any liquor that has not been purchased from a Government vendor or from a physician as provided by section 57.

Exceptions.

(3) Subsection 2 shall not apply to the Board nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this Act or the regulations.

Liquor
taken under
judicial
process.

(4) Nothing in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the Board. R.S.O. 1937, c. 294, s. 87.

Brewers'
etc., giving
liquor.

70. No brewer, distiller or manufacturer of liquor shall within Ontario, by himself, his clerk, servant or agent, give any liquor to any person, except as may be permitted by and in accordance with the regulations. R.S.O. 1937, c. 294, s. 88.

Sale by
vendors and
other
officials.

71.—(1) No person authorized to sell liquor in accordance with this Act or the regulations, and no clerk, servant or agent of such person shall sell or furnish liquor in any other place or at any other time or otherwise than as authorized by this Act or the regulations.

Permit
issuers.

(2) No official or person authorized to issue permits under this Act or the regulations shall issue to any one individual more than one permit for the purchase of liquor under this Act or the regulations.

False and
fictitious
permits.

(3) No person authorized to issue permits under this Act or the regulations shall issue a permit,

- (a) to any person who is disqualified under this Act or the regulations to make application for such permit;
- (b) to any person furnishing any false or fictitious particulars in his application for such permit.

(4) No person authorized to sell liquor in accordance with this Act or the regulations, and no clerk, servant or agent of such person shall sell or furnish liquor to any permit holder whose permit has not been acquired in accordance with this Act or the regulations. R.S.O. 1937, c. 294, s. 89.

Furnishing liquor on illegal permit.

72.—(1) No person authorized to issue permits under this Act or the regulations shall knowingly issue a permit to any person under the age of 21 years.

Permit not to be issued to minor.

(2) No person under the age of 21 years shall apply for or obtain a permit. 1942, c. 25, s. 3.

Minor not to apply for permit.

73. No holder of a licence under this Act or the regulations, or any other person, shall for any purpose whatsoever mix or permit or cause to be mixed with any liquor kept for sale, sold or supplied by him as a beverage, any drug or any form of methylic alcohol or any crude, unrectified or impure form of ethylic alcohol or any other deleterious substance or liquid. R.S.O. 1937, c. 294, s. 90.

Adulterated liquor sold under licence.

74.—(1) No member or employee of the Board shall be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee and whether for his own benefit or in a fiduciary capacity for some other person.

Interest in liquor business forbidden to Board, etc.

(2) No member or employee of the Board or any employee of the Government shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the Government or Board in pursuance of this Act or the regulations.

Taking improper commissions.

(3) No person selling or offering for sale to, or purchasing liquor from, the Government or the Board, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the Board or to any employee of the Government, or to anyone on behalf of such member or employee. R.S.O. 1937, c. 294, s. 91.

Offering commissions, etc.

75. Except as provided in this Act or the regulations, no person shall by himself, his clerk, servant, or agent attempt to purchase, or directly or indirectly or upon any pretence or upon any device, purchase or in consideration of the sale or transfer of any property, or for any other consideration, or at the time of the transfer of any property, take or accept any liquor from any other person. R.S.O. 1937, c. 294, s. 92.

Taking liquor unlawfully disposed of.

Where consumption of liquor prohibited.

Rev. Stat., c. 211.

76. Except as provided by this Act or *The Liquor Licence Act* or the regulations under this Act or that Act, no person shall consume liquor on any premises where liquor is kept for sale. R.S.O. 1937, c. 294, s. 93; 1944, c. 34, s. 15; 1946, c. 46, s. 9.

Liquor which may be consumed.

Rev. Stat., c. 211.

77. Except as provided by this Act or *The Liquor Licence Act* or the regulations under this Act or that Act, no person shall consume liquor unless the liquor has been acquired under the authority of a permit or prescription issued under this Act or the regulations, or is had or kept with the permission of the Board, and unless the package in which the liquor is contained and from which it is taken for consumption has, while containing that liquor, been sealed with the official seal prescribed by this Act or the regulations. R.S.O. 1937, c. 294, s. 94; 1944, c. 34, s. 16; 1946, c. 46, s. 9.

Liquor to be sealed.

78.—(1) Except in the case of,

- (a) liquor imported by the Government, or by the Board; or
- (b) sacramental or other wines used for religious purposes; or
- (c) liquor had or kept under section 62,

no liquor shall be kept or had by any person in Ontario unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained is, while containing that liquor, sealed with the official seal prescribed by this Act or the regulations.

Seizure of liquor without warrant.

(2) Any constable or other police officer who finds liquor that in his opinion is had or kept by any person in violation of this Act or the regulations may, without laying an information or obtaining a warrant, forthwith seize and remove the liquor and the packages in which it is kept, and upon conviction of the person for a violation of any provision of this section the liquor and all packages containing it shall in addition to any other penalty prescribed by this Act, *ipso facto* be forfeited to His Majesty in right of Ontario. R.S.O. 1937, c. 294, s. 95.

Consumption elsewhere than in residence.

Rev. Stat., c. 211.

79.—(1) Except as expressly provided by this Act or *The Liquor Licence Act* or the regulations made under this Act or that Act, no person shall consume liquor in any place other than a residence. R.S.O. 1937, c. 294, s. 96 (1); 1944, c. 34, s. 17; 1946, c. 46, s. 9.

Drunkenness in public places.

(2) No person shall be in an intoxicated condition in a public place. R.S.O. 1937, c. 294, s. 96 (2).

80. No person shall sell or supply liquor or permit liquor to be sold or supplied to any person under or apparently under the influence of liquor. R.S.O. 1937, c. 294, s. 97. Sale of liquor to drunken person.

81.—(1) No person shall knowingly sell or supply liquor to a person under the age of 21 years. Minors.

(2) No liquor shall be sold to a person who is apparently under the age of 21 years and in any prosecution for a violation of this subsection the justice shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of 21 years. 1944, c. 34, s. 18. Idem.

(3) No person under the age of 21 years shall apply for, attempt to purchase, purchase or otherwise obtain liquor. Minor prohibited from purchasing liquor.

(4) This section shall not apply to the supplying of liquor to a person under the age of 21 years for medicinal purposes only by the parent or guardian of such person, or to the administering of liquor to such person by a physician or as provided by this Act or the regulations. 1942, c. 25, s. 4. Application of section.

82. Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with this Act or the regulations, no person shall procure or supply or assist directly or indirectly in procuring or supplying liquor for or to any person whose permit is suspended or cancelled. R.S.O. 1937, c. 294, s. 99. Supply of liquor to person whose permit is suspended.

83.—(1) Notwithstanding anything in this Act or the regulations, the Board may by order signed by the Chief Commissioner or the Deputy Chief Commissioner prohibit any person from purchasing, having, giving or consuming any liquor, including beer and wine, and any such person who contravenes such order shall be guilty of an offence. R.S.O. 1937, c. 294, s. 100 (1). Board may prohibit purchase, etc.

(2) Notwithstanding anything in this Act or the regulations, where any order is made against any person under subsection 1, all liquor and original liquor containers in his possession or under seizure at the date of the order shall *ipso facto* be forfeited to His Majesty in right of Ontario. 1942, c. 25, s. 5 (1). Forfeiture of liquor and containers.

(3) The Board may by order signed by the Chief Commissioner or the Deputy Chief Commissioner prohibit a vendor, brewer, brewers' agent, producer of Ontario wine, holder of a licence under *The Liquor Licence Act* or other person from supplying either directly or indirectly liquor, including beer and wine, to any person against whom an order Board may prohibit supplying. Rev. Stat., c. 211.

has been issued pursuant to subsection 1 and any such vendor, brewer, brewers' agent, producer of Ontario wine, holder of a licence under *The Liquor Licence Act* or other person who knowingly contravenes any such order shall be guilty of an offence. R.S.O. 1937, c. 294, s. 100 (2); 1942, c. 25, s. 5 (2); 1944, c. 34, s. 26; 1946, c. 46, s. 9.

Board may
prescribe.
Rev. Stat.,
c. 211.

(4) The Board may by order signed by the Chief Commissioner or the Deputy Chief Commissioner prescribe the kinds and quantities of liquor, including beer and wine, that may be sold to any person by a vendor, brewer, brewers' agent, producer of Ontario wine, holder of a licence under *The Liquor Licence Act* or other person under this Act or the regulations and any person who knowingly contravenes the provisions of any such order shall be guilty of an offence. R.S.O. 1937, c. 294, s. 100 (3); 1942, c. 25, s. 5 (3); 1944, c. 34, s. 26; 1946, c. 46, s. 9.

Service of
order.

(5) Service of the orders of the Board mentioned in subsections 1, 3 and 4 shall be effective if forwarded by registered mail to the last known address of the person against whom the order is made. R.S.O. 1937, c. 294, s. 100 (4).

Supply of
liquor to
interdicted
person.

84. Except in the case of liquor supplied to an interdicted person upon the prescription of a physician, or administered to him by a physician or dentist pursuant to this Act or the regulations, no person shall knowingly procure for, sell or give, to any interdicted person, any liquor, nor directly or indirectly assist in procuring or supplying any liquor to any interdicted person. R.S.O. 1937, c. 294, s. 101; 1944, c. 34, s. 19.

Permits and
interdicted
persons.

85. No permit shall be issued to any interdicted person, and every interdicted person who makes application for a permit, or who enters or is found upon the premises of any Government store, shall be guilty of an offence. R.S.O. 1937, c. 294, s. 102.

Fresh
application.

86.—(1) Subject to subsection 2, no person whose permit is suspended or cancelled shall during the period of suspension or after cancellation hold, possess or make application for another permit under this Act or the regulations.

Exception.

(2) Subsection 1 shall not create an offence for any person whose permit is suspended or cancelled making application to the Board for return of such suspended permit or issue of a new permit. R.S.O. 1937, c. 294, s. 103.

Purchase
under
suspended
permit.

87.—(1) No person shall purchase or attempt to purchase liquor under a permit that is suspended or that has been cancelled, or of which he is not the holder.

(2) No person shall apply in any name except his own for the issue to him of a permit authorizing the purchase of liquor. Applying for permit in false name.

(3) No person shall furnish a wrong or fictitious address in applying for the issue to him of a permit authorizing the purchase of liquor. False address.

(4) Except as provided by this Act or the regulations, no person shall have or keep in his possession a false or fictitious permit purporting to authorize the purchase of liquor, or a permit of which he is not the holder. R.S.O. 1937, c. 294, s. 104. Possession of false or fictitious permit.

88. No person shall,

Permitting drunkenness.

(a) permit drunkenness to take place in any house or on any premises of which he is the owner, tenant or occupant; or

(b) permit or suffer any person apparently under the influence of liquor to consume any liquor in any house or on any premises of which the first named person is owner, tenant or occupant; or

(c) give any liquor to any person apparently under the influence of liquor. R.S.O. 1937, c. 294, s. 105.

89.—(1) Except as authorized by this Act or *The Liquor Licence Act*, no person, not holding a permit under this Act or the regulations entitling him so to do, shall have any liquor in his possession. R.S.O. 1937, c. 294, s. 106 (1); 1946, c. 46, s. 6. Having liquor without permit. Rev. Stat., c. 211.

(2) The holder of an individual permit may have in his possession or consume in his residence only the liquor had and acquired by him under his individual permit or otherwise under this Act or the regulations and in accordance therewith. Possession of liquor on permit.

(3) No person may have in his possession or consume in his residence any liquor which has not been had or acquired by him under his individual permit or otherwise under this Act or the regulations and in accordance therewith. Illegal possession.

(4) Every person who is not prohibited or disqualified by this Act or the regulations or any other Act from having in his possession or consuming the same, may have in his possession and consume beer or wine, provided the sale, possession and consumption of such beer or such wine is made and had in accordance with this Act and the regulations. R.S.O. 1937, c. 294, s. 106 (2-4). Possession of beer and wine.

Hotels.

Rev. Stat.,
c. 211.

90.—(1) Except as provided by this Act or *The Liquor Licence Act* or the regulations under this Act or that Act and except in the case of liquor kept and consumed pursuant to a special permit granted under section 38, no person,

- (a) shall keep or consume liquor in any part of a hotel other than a private guest room;
- (b) shall keep or have any liquor in any room in a hotel unless he is a *bona fide* guest of the hotel and is duly registered in the office of the hotel as an occupant of that room and has baggage and personal effects belonging to him in the hotel. R.S.O. 1937, c. 294, s. 107 (1); 1944, c. 34, s. 20; 1946, c. 46, s. 9.

Application
by hotel
owner.

(2) The Board upon the application of the owner or proprietor of an hotel may declare the hotel, or any designated part thereof, to be a public place for the purposes of this Act and the regulations and may grant a certificate to such effect signed by the Chief Commissioner or Deputy Chief Commissioner to the owner or proprietor.

Hotel
declared
a public
place.

(3) From the date of the granting of such certificate the hotel, or the designated part thereof, shall be a public place for the purposes of this Act and the regulations and subsection 1 shall not apply to the hotel or the designated part thereof.

Cancellation
of
certificate.

(4) Upon the application of the owner or proprietor of an hotel to whom such certificate has been granted, the Board may at any time cancel such certificate and from the date of cancellation the hotel, or the designated part, shall for the purposes of this Act and the regulations cease to be a public place and subsection 1 shall apply to the hotel or the designated part.

Duty of
hotel
proprietor.

(5) If the owner or proprietor of any hotel, or his clerk, servant or agent finds any individual permit on the hotel premises, or any part thereof, he shall deliver such permit within 24 hours to the nearest vendor for transmission to the Board. R.S.O. 1937, c. 294, s. 107 (2-5).

Canvassing
for orders,
etc.

91.—(1) Except as permitted by this Act or the regulations, no person shall,

- (a) canvass for, receive, take or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor, or hold himself out as such agent or intermediary;

- (b) exhibit or display, or permit to be exhibited or displayed any sign or poster containing the words "bar", "bar-room", "saloon", "spirits", or "liquors" or words of like import; ^{exhibiting signs;}
- (c) exhibit or display, or permit to be exhibited or displayed any advertisement or notice of or concerning liquor by an electric or illuminated sign, contrivance or device, or on any hoarding, sign-board, billboard or other place in public view or by any of the means aforesaid, advertise any liquor. R.S.O. 1937, c. 294, s. 108 (1); 1947, c. 57, s. 4. ^{special signs.}

(2) This section shall not apply to any advertisement respecting liquor in premises where the liquor may be lawfully stored, kept or sold under this Act or the regulations, provided such advertisement has first been permitted in writing by the Board and then subject to such permission and the directions of the Board. ^{Approved advertising.}

(3) No person, unless authorized by the Board, shall exhibit, publish or display or permit to be exhibited, published or displayed any other advertisement, or form of advertisement, or any other announcement, publication or price list of or concerning liquor or where or from whom the liquor may be had, obtained or purchased. ^{Advertising.}

(4) This section shall not apply,

^{Exception.}

- (a) to the Board nor to any act of the Board, nor to any Government store; nor
- (b) to the receipt of transmission of a telegram or letter by any telegraph agent or operator or post office employee in the ordinary course of his employment as such agent, operator or employee. R.S.O. 1937, c. 294, s. 108 (2-4).

92. Every person who, without lawful excuse, is found in any premises at the time of the commission upon such premises of any offence against or violation of any of the provisions of this Act shall be guilty of an offence. 1942, c. 25, s. 6. ^{Offence.}

93. Every person manufacturing or brewing beer shall put upon all bottles containing beer so manufactured or brewed for sale within Ontario a distinctive label showing the nature of the contents, the name of the person by whom the beer is manufactured or brewed, and the place where the beer was brewed, and shall show clearly on all barrels or other receptacles ^{Labels, etc., for beer or liquor.}

containing beer so manufactured or brewed, whether bottled or otherwise, the nature of the contents, the name of the person by whom the beer is manufactured or brewed, and the place where the beer was brewed, and for the purposes of this section, the contents of bottles, barrels and other receptacles containing beer shall be shown by the use of the word "beer", "ale", "stout" or "porter" on the outside of all bottles, barrels and other receptacles. R.S.O. 1937, c. 294, s. 109.

Sale of
Ontario wine.

94.—(1) Subject to this Act and the regulations and to any restrictions that the Board may impose, producers of Ontario wines may keep and offer for sale, sell and deliver such wines in such quantities as may be permitted by the Board. R.S.O. 1937, c. 294, s. 110 (1); 1944, c. 34, s. 26.

Sales
prohibited.

(2) A producer of Ontario wines shall not sell such wines otherwise than as permitted by this Act or the regulations or allow any wine so sold, or any part thereof, to be drunk upon the premises of such producer. R.S.O. 1937, c. 294, s. 110 (2); 1944, c. 34, s. 26.

Order of
inter-
diction.

95.—(1) Where it is made to appear to the satisfaction of a judge of the county or district court that any person, resident or sojourning within Ontario, by excessive drinking of liquor, misspends, wastes, or lessens his estate, or injures his health, or interrupts the peace and happiness of his family, the judge may make an order of interdiction directing the cancellation of any permit held by that person and prohibiting the sale of liquor to him until further ordered, and the judge shall cause the order to be forthwith filed with the Board.

Disregard
of order.

(2) Every interdicted person keeping or having in his possession or under his control or consuming any liquor shall be guilty of an offence, and the justice making the conviction may in and by the conviction declare the liquor and all packages in which the liquor is contained to be forfeited to His Majesty in right of Ontario. R.S.O. 1937, c. 294, s. 111.

Delivery of
liquor to
Board on
inter-
diction.

96. Upon an order of interdiction being made, the interdicted person shall deliver forthwith to the Board all liquor in his possession or under his control to be kept for him by the Board until the order of interdiction is revoked or set aside, or at the option of the Board, such liquor may be purchased from him at a price to be fixed by the Board. R.S.O. 1937, c. 294, s. 112.

Cancellation
of
permit.

97. Upon receipt of the order of interdiction, the Board shall cancel any permit held by the interdicted person, and shall notify the interdicted person and all vendors, and such

other persons as may be provided by the regulations, of the cancellation of the permit, and of the order of interdiction so made and filed prohibiting the sale of liquor to the interdicted person. R.S.O. 1937, c. 294, s. 113.

98.—(1) Upon an application to the judge by any person in respect of whom an order of interdiction has been made, and upon it being made to appear to the satisfaction of the judge that the circumstances of the case did not warrant the making of the order of interdiction, or upon proof that the interdicted person has refrained from drunkenness for at least 12 months immediately preceding the application, the judge may by order set aside the order of interdiction filed with the Board, and the interdicted person may be restored to all his rights under this Act and the regulations, and the Board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations. Revocation of order.

(2) The applicant shall, at least 10 clear days before the application, give notice thereof to the Board, in writing served upon the Board, and to such other persons as the judge may direct. R.S.O. 1937, c. 294, s. 114. Notice of application.

99. Every person who violates any provision of this Act or the regulations shall be guilty of an offence, whether declared or not. R.S.O. 1937, c. 294, s. 115. Violations of Act to be offences.

100. Any violation of this Act or the regulations by any person shall be charged as a first offence notwithstanding such person has been previously convicted of an offence against this Act or the regulations; provided that such violation by such person shall be charged as a first offence only if the previous conviction occurred more than one year before the date of such violation. R.S.O. 1937, c. 294, s. 116. First offence.

101. Every brewer, distiller or manufacturer who is convicted of keeping for sale or selling liquors by himself, or by his clerk, servant, agent or employee contrary to this Act, or the regulations shall be guilty of an offence and shall be liable to a penalty of \$5,000. R.S.O. 1937, c. 294, s. 117. Brewers and distillers.

102.—(1) Every person who violates any of the provisions of subsection 1 of section 71 shall be guilty of an offence and shall for a first offence be imprisoned for not more than six months and for a second or subsequent offence be imprisoned for not more than twelve months. Penalty for offence as to permits.

(2) Every person who knowingly violates any of the provisions of subsections 2, 3 or 4 of section 71 shall be guilty of Penalty.

an offence and shall be imprisoned for not less than six months and not more than twelve months.

Corrupt
dealings of
officials.

(3) Every person who violates any of the provisions of section 74 shall be guilty of an offence and shall be imprisoned for not more than twelve months. R.S.O. 1937, c. 294, s. 118.

Sale to
minors and
interdicted
persons.

103. Every person who violates any provision of subsection 1 of section 81 or section 84 shall be guilty of an offence and shall for the first offence be imprisoned for not less than one month, and not more than three months, and for a second or subsequent offence shall be imprisoned for not less than four months, and not more than twelve months. R.S.O. 1937, c. 294, s. 119; 1942, c. 25, s. 7; 1944, c. 34, s. 21.

Sale
without
authority.

104.—(1) Every person who violates any of the provisions of subsection 1 of section 69 shall be guilty of an offence and shall for a first offence be imprisoned for not less than two months and not more than six months, and for a second or subsequent offence shall be imprisoned for six months.

Adulterated
liquor.

(2) Every person who violates any of the provisions of section 73 shall be guilty of an offence and shall for a first offence be imprisoned for not less than six months and not more than one year, and for a second or subsequent offence shall be imprisoned for not less than one year. R.S.O. 1937, c. 294, s. 120 (1, 2).

Penalty.

(3) Every person who violates any of the provisions of subsection 2 of section 72 or subsection 2 or 3 of section 81 shall be guilty of an offence and shall be liable for a first offence to a penalty of not less than \$10 and not more than \$500 and in default of immediate payment shall be imprisoned for a term of not more than two months, or to imprisonment for a term of not more than thirty days, or to both fine and imprisonment, and for a second or subsequent offence to imprisonment for a term of not more than three months. 1942, c. 25, s. 8; 1944, c. 34, s. 22 (1).

Penalties.

(4) Every person who violates any of the provisions of sections 35, 36, 57, 59, 60, 61, subsection 2 of section 69 or section 82, 87, 89, 90 or 91 shall be guilty of an offence and shall be liable for a first offence to a penalty of not less than \$100 and not more than \$1,000, and in default of immediate payment shall be imprisoned for a term of three months, and for a second or subsequent offence to imprisonment for three months. R.S.O. 1937, c. 294, s. 120 (3); 1940, c. 28, s. 16 (2); 1944, c. 34, s. 22 (2).

(5) Every person who violates the provisions of section 43 shall be guilty of an offence and shall be liable for a first offence to a penalty of not less than \$10 and not more than \$1,000, and in default of immediate payment shall be imprisoned for a term of one month, and for a second or subsequent offence to imprisonment for three months. 1940, c. 28, s. 16 (3). Penalty for violation of s. 43.

(6) If the offender convicted of an offence referred to in this section is a corporation, it shall be liable to a penalty of not less than \$1,000 and not more than \$3,000. Corporations.

(7) Every person who violates subsection 2 of section 79 shall be guilty of an offence and shall be liable for a first offence to a penalty of not less than \$10 and not more than \$50, and in default of immediate payment to imprisonment for not more than thirty days; for a second offence to a penalty of not less than \$50 and not more than \$100, and in default of immediate payment to imprisonment for not less than one month and not more than two months, and for a third or subsequent offence to imprisonment for not less than three months and not more than six months without the option of a fine. R.S.O. 1937, c. 294, s. 120 (4, 5). Drunkenness in public places.

105.—(1) Every person guilty of an offence against this Act for which no penalty has been specifically provided shall be liable, for a first offence to a penalty of not less than \$10 and not more than \$500, and in default of immediate payment to imprisonment for not more than thirty days; for a second offence to imprisonment for not less than one month and not more than two months, or to a penalty of not less than \$200 and not more than \$1,000 and, in default of immediate payment to imprisonment for not less than two months and not more than four months, and for a third or subsequent offence to imprisonment for not less than three months and not more than six months, without the option of a fine. General penalty.

(2) If the offender convicted of an offence referred to in this section is a corporation, it shall for a first offence be liable to a penalty of not less than \$1,000 and not more than \$2,000, and for a second or subsequent offence to a penalty of not less than \$2,000 and not more than \$3,000. Corporations.

(3) Where any person charged with an offence against any of the provisions of this Act or the regulations is found in possession of liquor purchased in accordance with this Act and the regulations, which liquor exceeds the sum of \$50 in value, or where such person is found in possession of any liquor not purchased in accordance with this Act and the regulations, the justice making the conviction shall in addition Increased penalties in certain cases.

to any other penalty prescribed, impose on such person a sentence of not less than one month and not more than three months' imprisonment unless such person establishes, to the satisfaction of the justice, the circumstances under which the liquor was obtained, the person from whom the liquor was so obtained and the manner in which it came into the possession of the person so charged; provided that it shall not be necessary to set out in the information charging the offence or in the conviction, the value of the liquor or the fact that the liquor was not purchased in accordance with this Act or the regulations. R.S.O. 1937, c. 294, s. 121.

Recovery of penalties from corporation by distress.

106.—(1) When a corporation is convicted of any offence under this Act or the regulations and the conviction adjudges a pecuniary penalty or compensation to be paid by the corporation, or an order under this Act requires the payment of a sum of money by a corporation, the court, judge, or justice, by his or their conviction or order, after adjudging payment of such penalty, compensation or sum of money with costs may order and adjudge that, in default of payment of such penalty, compensation or sum of money forthwith or within a limited time, such penalty, compensation or sum of money shall be levied by distress and sale of the goods and chattels of the corporation.

Enforcing judgment against corporation.

(2) In any such case and in addition to the other remedies provided hereby, a copy of such conviction or order certified to by any judge, or justice, or by the officer in whose custody the same is by law required to be kept, may be filed in the proper county or district court, and such conviction or order shall thereupon become a judgment of such court and all proceedings may be thereupon taken and had as on any other judgment of such court.

Cancellation of licence of corporation.

(3) In the case of the conviction of or an order against a corporation which by the law of Ontario is required to obtain a licence to carry on its business in Ontario and has obtained such licence, if the penalty, compensation or sum of money is not paid according to the terms of the conviction or order, the Lieutenant-Governor in Council may, in case of such default in payment of penalty, compensation or sum of money as aforesaid, cancel and revoke the licence so issued to the corporation.

Application of section.

(4) Nothing in this section shall be construed as in any way affecting, limiting or restricting any proceedings which otherwise can or may be taken or had for the infliction of punishment by penalty or imprisonment or the modes of enforcement or recovery of fines or penalties.

(5) Notwithstanding anything in this Act where a pecuniary penalty is imposed, the justice may in his discretion order that in default of payment of the penalty, distress shall issue for the recovery thereof or he may if he sees fit order that in default of immediate payment of the penalty the offender shall be committed to jail for such term as may be allowed by law. R.S.O. 1937, c. 294, s. 122.

107. Where an offence against this Act or the regulations is committed by a corporation, the officer or agent of the corporation in charge of the premises in which the offence is committed shall *prima facie* be deemed to be a party to the offence so committed, and shall be personally liable to the penalties prescribed for the offence as a principal offender; but nothing in this section shall relieve the corporation or the person who actually committed the offence from liability therefor. R.S.O. 1937, c. 294, s. 123.

108.—(1) Upon proof of the fact that an offence against this Act or the regulations has been committed by any person in the employ of the occupant of any house, shop, room or other premises in which the offence is committed, or by any person who is suffered by the occupant to be or remain in or upon such house, shop, room or premises, or to act in any way for the occupant, the occupant shall *prima facie* be deemed to be a party to the offence so committed, and shall be liable to the penalties prescribed for the offence as a principal offender, notwithstanding the fact that the offence was committed by a person who is not proved to have committed it under or by the direction of the occupant; but nothing in this section shall relieve the person actually committing the offence from liability therefor.

(2) Upon proof of the fact that an offence against any of the provisions of this Act or the regulations has been committed upon or in respect of any premises, or any portion thereof, by any person claiming to be agent, tenant or lessee of the owner or proprietor of such premises, or any such portion thereof, the justice trying the case shall have the right to draw inferences of fact from the agreement or lease between such person and such owner or proprietor and from the number of offences which have been committed against this Act or the regulations upon or in respect of such premises, or any such portion thereof, and from the circumstances under which liquor is kept or dealt with upon such premises, or any such portion thereof, and if the justice is of opinion that the owner or proprietor had knowledge of the use of such premises, or such part thereof, in the committing of offences against this Act or the regulations, he may impose upon such owner or

proprietor a penalty of not less than \$1,000 and not more than \$2,000 and in default of immediate payment thereof, such owner or proprietor shall be imprisoned for not less than three months and not more than six months. R.S.O. 1937, c. 294, s. 124.

Search with
warrant.

109.—(1) Upon information on oath by any constable or other police officer that he suspects or believes that liquor is unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any justice, or any justice of the peace, by warrant under his hand, to authorize and empower the constable or other person named therein to enter and search the building or premises and every part thereof, and for that purpose to break open any door, lock or fastening of the building or premises or any part thereof, or any closet, cupboard, box or other receptacle therein which might contain liquor.

Reasons for
suspicion
need not be
set out.

(2) It shall not be necessary for the constable or other police officer to set out in the information any reason or grounds for his suspicion or belief.

Search
without
warrant.

(3) Any constable or other police officer who is authorized in writing for the purpose by the Commissioner of Police for Ontario, if he believes that liquor is unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, may without warrant enter and search the building or premises and every part thereof, and for that purpose may break open any door, lock or fastening of the building or premises or any part thereof, or any closet, cupboard, box or other receptacle therein which might contain liquor, and such authority shall be a general one and shall be effective until revoked. R.S.O. 1937, c. 294, s. 125 (1-3).

Seizure of
permit, etc.,
without
warrant.

Rev. Stat.,
c. 211.

(4) Any constable or other police officer may, without a warrant, seize from any person or corporation, any permit or licence issued under this Act or under *The Liquor Licence Act* and the regulations made under this Act or that Act. 1944, c. 34, s. 23; 1946, c. 46, s. 9.

Arrest
without
warrant.

110. Any constable or other police officer may arrest without warrant any person whom he finds committing an offence against this Act or the regulations. R.S.O. 1937, c. 294, s. 126.

Search of
vehicles
without
warrant.

111. Any constable or other police officer, if he believes that liquor is unlawfully kept or had, or kept or had for unlawful purposes, and is contained in any vehicle, motor car, automobile, vessel, boat, canoe, or conveyance of any descrip-

tion, or is unlawfully kept or had, or kept or had for unlawful purposes, on the lands or person of any person, shall have power without warrant to search for such liquor wherever he may suspect it to be, and if need be, by force, and may search the person himself, and may seize and remove any liquor found and the packages in which the liquor is kept. R.S.O. 1937, c. 294, s. 127.

112. Notwithstanding anything in this Act or the regula- Search
tions, any search warrant or authorization to search issued or warrant
authorized under this Act may be executed at any time, may be
including Sunday or other holiday, and by day or night. executed at
any time.
R.S.O. 1937, c. 294, s. 128.

113. Where the constable or other police officer in making Penalty.
or attempting to make any search under or in pursuance of the
authority conferred by section 109 or 111 finds in any building
or place any liquor which in his opinion is unlawfully kept or
had, or kept or had for unlawful purposes, contrary to any of
the provisions of this Act or the regulations, he may forthwith
seize and remove the liquor and the packages in which the
liquor is kept, and may seize and remove any book, paper or
thing found in the building or place which in his opinion will
afford evidence as to the commission of any offence against
this Act or the regulations, and upon the conviction of the
occupant of such building or place or any other person for
keeping the liquor contrary to this Act or the regulations in
such building or place, the justice making the conviction shall
in and by the conviction declare the liquor and packages or
any part thereof to be forfeited to His Majesty in right of
Ontario. R.S.O. 1937, c. 294, s. 129.

114. Where the constable or other police officer, in making Seizure
or attempting to make any search under or in pursuance of and for-
the authority conferred by section 111, finds in any vehicle, feiture of
motor car, automobile, vessel, boat, canoe or conveyance of liquor and
any description, liquor which, in his opinion, is unlawfully vehicles,
kept or had, or kept or had for unlawful purposes contrary to etc.
any of the provisions of this Act or the regulations, he may
forthwith seize the liquor and the packages in which the liquor
is contained, and the vehicle, motor car, automobile, vessel,
boat, canoe or conveyance in which the liquor is so found,
and upon the conviction of the occupant or person in charge
of the vehicle, motor car, automobile, vessel, boat, canoe or
conveyance or of any other person, for having or keeping the
liquor, contrary to this Act or the regulations in such vehicle,
motor car, automobile, vessel, boat, canoe or conveyance,
the justice making the conviction may in and by the conviction
declare the liquor or any part thereof so seized and the

packages in which the liquor is contained to be forfeited to His Majesty, and the justice may in and by the conviction further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to His Majesty in right of Ontario. R.S.O. 1937, c. 294, s. 130.

Impounding and forfeiture of vehicles, etc.

115.—(1) Where liquor is found by any constable or other police officer on any premises or in any place or in any vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description and in such quantities as to satisfy the constable or officer that the liquor is being had or kept contrary to this Act or the regulations, it shall be lawful for the constable or officer to forthwith seize and remove by force, if necessary, any liquor so found and the packages in which the liquor was had or kept, together with any vehicle, motor car, automobile, vessel, boat, canoe or conveyance containing the liquor.

Duty of officer.

(2) Where liquor and any vehicle, motor car, automobile, vessel, boat, canoe or other conveyance containing liquor has been seized by a constable or officer under this Act, under such circumstances that the constable or officer is satisfied that the liquor was had or kept contrary to this Act or the regulations, he shall retain the liquor and the packages in which the liquor was had or kept, together with such vehicle, motor car, automobile, vessel, boat, canoe or other conveyance.

Forfeiture.

(3) If, within 30 days from the date of the seizure, no person by notice in writing filed with the Board claims to be the owner of the liquor and the vehicle, motor car, automobile, vessel, boat, canoe or other conveyance containing the liquor, the liquor and all packages containing the liquor, together with the vehicle, motor car, automobile, vessel, boat, canoe or other conveyance containing the liquor shall *ipso facto* be forfeited to His Majesty in right of Ontario and shall forthwith be delivered to the Board.

Onus on claimant.

(4) If within such time any claimant appears, it shall be incumbent upon him within that time and after three days notice in writing filed with the Board stating the time and place fixed for the hearing, to prove his claim and his right under this Act and the regulations to the possession of the liquor and packages to the satisfaction of any justice, and on failure within that time to prove and establish his claim and right, the liquor and packages and the vehicle, motor car, automobile, vessel, boat, canoe or other conveyance in which the liquor was found shall *ipso facto* be forfeited to His Majesty in right of Ontario. R.S.O. 1937, c. 294, s. 131.

116.—(1) In every case in which a justice makes any order for the forfeiture of liquor under this Act, and in every case in which any claimant to liquor under section 115, fails to establish his claim and right thereto, the liquor in question and the packages in which the liquor is kept shall forthwith be delivered to the Board. Delivery of forfeited liquor to Board.

(2) The Board shall thereupon determine the market value of all forfeited liquor that is found to be suitable for sale in the Government stores, and the Board shall pay the amount so determined to the Treasurer of Ontario, after deducting therefrom the expenses necessarily incurred by the Board for transporting the forfeited liquor to the Government warehouses, and the liquor suitable for sale shall be taken into stock by the Board and sold under this Act and the regulations. Purchase of forfeited liquor by Board.

(3) All forfeited liquor which is found to be unsuitable for sale in Government stores shall be destroyed under competent supervision as may from time to time be directed by the Board. Destruction of forfeited liquor unfit for use.

(4) In every case in which liquor is seized by a constable or other police officer, it shall be his duty to forthwith make or cause to be made to the Board a report in writing of the particulars of the seizure. R.S.O. 1937, c. 294, s. 132. Report on seizure.

117. Where any information is given to any constable or other police officer that there is cause to suspect that a person is contravening any of the provisions of this Act or the regulations, it shall be his duty to make diligent inquiry into the truth of such information, and to enter complaint of such contravention before the proper court, without communicating the name of the person giving such information, and it shall be the duty of the Crown attorney within the county in which the offence is committed to attend to the prosecution of all cases submitted to him by a constable or by an officer appointed under this Act by the Board or by any officer appointed by the council of a municipality which has entered into an agreement with The Liquor Licence Board of Ontario and the council appointing such officer shall be responsible for the payment of the proper fees of the Crown attorney when so employed by such officer. R.S.O. 1937, c. 294, s. 133; 1947, c. 57, s. 5. Duties of officers and Crown attorneys on receiving information of infringement of this Act.

118.—(1) For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this Act and the regulations, any inspector or officer appointed by the Board in writing for the purpose, or any constable or other police officer, may inspect the freight and express books and records, and all way-bills, bills of lading, receipts and documents in the possession of any railway Duties of officers.

company, express company or other common carrier doing business within Ontario, containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within Ontario.

Carriers not
producing
records.

(2) Every railway company, express company or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record or document referred to in subsection 1 when requested to do so by the Board or by such inspector or officer, or constable or other police officer, shall be guilty of an offence. R.S.O. 1937, c. 294, s. 134.

Description
of offence.

119. In describing the offence respecting the sale or keeping for sale or other disposal of liquor, or the having, keeping, giving, purchasing or the consumption of liquor in any information, summons, conviction, warrant or proceeding under this Act, it shall be sufficient to state the sale or keeping for sale, or disposal, having, keeping, giving, purchasing or consumption of liquor simply, without stating the name or kind of the liquor or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased or consumed, except in the case of offences where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. R.S.O. 1937, c. 294, s. 135.

Powers as
to amend-
ment.

120. Notwithstanding anything in this Act, at any time before judgment the justice may amend or alter any information and may substitute for the offence charged therein any other offence against this Act or the regulations; but if it appears that the defendant has been materially misled by such amendment, the justice shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment. R.S.O. 1937, c. 294, s. 136.

Payment of
penalties
to Board.

121. Subject to section 83 of *The Liquor Licence Act*, all money penalties imposed under this Act, after deducting all necessary costs, shall be paid by the justice to the Board. 1947, c. 56, s. 1.

Informa-
tion, when
to be laid.

122. All informations or complaints for the prosecution of any offence against this Act or the regulations shall be laid or made in writing within three months after the commission of the offence or after the cause of action arose and not afterwards, before any justice of the peace for the county or

district in which the offence is alleged to have been committed, and may be made without any oath or affirmation to the truth thereof, and the same may be according to form provided in the regulations or to the like effect. R.S.O. 1937, c. 294, s. 140.

123. All prosecutions under this Act, whether for the recovery of a penalty or otherwise, shall take place before a magistrate having jurisdiction or before two or more justices of the peace where no such magistrate is available. R.S.O. 1937, c. 294, s. 141. All prosecutions may be before justice.

124. Except as otherwise provided in this Act, the penalties imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act*. R.S.O. 1937, c. 294, s. 142. Penalties, recovery of. Rev. Stat., c. 379.

125. The description of any offence under this Act or the regulations, in the words of this Act or the regulations, or in any words of like effect, shall be sufficient in law, and any exception, exemption, provision, excuse or qualification, whether it occurs by way of proviso or in the description of the offence in this Act or the regulations, may be proved by the defendant, but need not be specified or negatived in the information; but if it is so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant. R.S.O. 1937, c. 294, s. 143. Description of offence.

126. In any prosecution under this Act for the sale or keeping for sale or other disposal of liquor, or the having, keeping, giving, purchasing or consuming of liquor, it shall not be necessary that any witness should depose to the precise description or quantity of the liquor sold, disposed of, kept, had, given, purchased or consumed, or the precise consideration, if any, received therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but the justice trying the case, so soon as it appears to him that the circumstances in evidence sufficiently establish the offence complained of, shall put the defendant on his defence, and, in default of his rebuttal of such evidence to the satisfaction of the justice, convict him accordingly. R.S.O. 1937, c. 294, s. 144. Information.

127. In proving the sale, disposal, gift or purchase, gratuitous or otherwise, or consumption of liquor, it shall not be necessary in any prosecution to show that any money actually passed or any liquor was actually consumed, if the justice hearing the case is satisfied that a transaction in the Proof of sale.

nature of a sale, disposal, gift or purchase actually took place, or that any consumption of liquor was about to take place, and proof of consumption or intended consumption of liquor on premises on which such consumption is prohibited, by some person not authorized to consume liquor thereon, shall be evidence that such liquor was sold or given to or purchased by the person consuming, or being about to consume, or carrying away such liquor, as against the occupant of such premises. R.S.O. 1937, c. 294, s. 145.

Analysis by
federal or
provincial
analysts.

128. In any prosecution under this Act the production by a constable or other police officer of a certificate or report signed or purporting to be signed by a federal or provincial analyst as to the analysis or ingredients of any liquor or other fluid or any preparation, compound or substance, such certificate or report shall be conclusive evidence of the facts stated in the certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature. R.S.O. 1937, c. 294, s. 146.

Inference as
to intoxicat-
ing liquor.

129. The justice trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the liquor in question is intoxicating from the fact that a witness describes it as intoxicating or by a name which is commonly applied to an intoxicating liquor. R.S.O. 1937, c. 294, s. 147.

Inference
from
circum-
stances.

130. Upon the hearing of any charge of selling or purchasing liquor or of unlawfully having or keeping liquor contrary to this Act or the regulations, the justice trying the case shall have the right to draw inferences of fact from the kind and quantity of liquor found in the possession of the person accused, or in any building, premises, vehicle, motor car, automobile, vessel, boat, canoe, conveyance or place occupied or controlled by him, and from the frequency with which the liquor is received thereat or therein or is removed therefrom, and from the circumstances under which it is kept or dealt with. R.S.O. 1937, c. 294, s. 148.

Onus on
proof of
possession.

131.—(1) If, on the prosecution of any person charged with committing an offence against this Act or the regulations, in selling or keeping for sale or giving or keeping or having or purchasing or receiving of liquor, *prima facie* proof is given that such person had in his possession or charge or control any liquor in respect of or concerning which he is being prosecuted, then, unless such person proves that he did not commit the offence with which he is so charged, he may be convicted of the offence.

(2) In the prosecution of any person charged with an offence against this Act or the regulations, the entries in or on any permit produced shall be *prima facie* evidence of the sale to the holder of such permit of the kind and quantities of liquor endorsed therein or thereon, and of the dates of the sales. Entries on permit *prima facie* evidence.

(3) In the prosecution of any person charged with an offence against this Act or the regulations the production of a certificate of cancellation or suspension of permit signed by any member of the Board shall be *prima facie* evidence of the cancellation or suspension of the permit mentioned in the certificate. R.S.O. 1937, c. 294, s. 149. Certificate of cancellation of permit *prima facie* evidence.

132.—(1) The burden of proving the right to have or keep or sell or give or purchase or consume liquor shall be on the person accused of improperly or unlawfully having or keeping or selling or giving or purchasing or consuming liquor. Burden of proof.

(2) The burden of proving that any prescription or administration of liquor is *bona fide* and for medical purposes only shall be upon the person who prescribes or administers the liquor, or causes the liquor to be administered, and a justice trying a case shall have the right to draw inferences of fact from the frequency with which similar prescriptions are given and from the amount of liquor prescribed or administered, and from the circumstances under which it is prescribed or administered. R.S.O. 1937, c. 294, s. 150. Onus on physicians.

133.—(1) The proceedings upon any information for an offence against this Act or the regulations, in a case where a previous conviction or convictions are charged, shall be as follows: Procedure where conviction charged.

- (a) The justice shall in the first instance inquire concerning the subsequent offence only, and if the accused is found guilty thereof he shall then be asked whether he was so previously convicted as alleged in the information, and if he answers that he was so previously convicted he shall be sentenced accordingly; but if he denies that he was so previously convicted or does not answer such question, the justice shall then inquire concerning the previous conviction or convictions. Use of previous conviction after accused found guilty.
- (b) The previous convictions may be proved *prima facie* by the production of a certificate purporting to be under the hand of a convicting justice or the Minister or the clerk of the court to whose office the conviction has been returned, without proof of signature or official character. Proof of previous convictions.

Procedure where previous conviction avoided.

- (c) In the event of any conviction for any second or subsequent offence becoming void or defective after the making thereof by reason of any previous convictions being set aside, quashed or otherwise rendered void, a justice by whom the second or subsequent conviction was made shall summon the person convicted to appear at a time and place to be named, and shall thereupon, upon proof of the due service of the summons, if such person fails to appear, or on his appearance, amend the second or subsequent conviction, and adjudge such penalty or punishment as might have been adjudged had the previous conviction never existed, and the amended conviction shall thereupon be held valid to all intents and purposes as if it had been made in the first instance.

Conviction under different sections.

- (d) Where a person who has been convicted of a violation of any provision of this Act or the regulations is afterwards convicted of a violation of any other provision of this Act or the regulations, such later conviction shall be deemed a conviction for a second offence within the meaning of this Act, and shall be dealt with and punished accordingly, although the two convictions may have been under different provisions.

Including several charges in one information.

- (2) Charges of several offences against this Act or the regulations committed by the same person may be included in one and the same information if the information and the summons or warrant issued thereon contain specifically the time and place of each offence.

One Conviction for several offences.

- (3) One conviction for several offences, and providing a separate penalty or punishment for each, may be made under this Act although such offences may have been committed on the same day, but the increased penalty or punishment hereinbefore imposed shall only be incurred or awarded in the case of offences committed on different days and after information laid for a first offence. R.S.O. 1937, c. 294, s. 151.

Service on corporations.

134. In all prosecutions, actions or proceedings under this Act against a corporation, every summons, warrant, order, writ, or other proceeding may in addition to any other manner of service which may be provided or authorized by law be served on the corporation by delivering the same to any officer, attorney or agent of the corporation within Ontario, or by leaving it at any place within Ontario where it carries on any business; provided that service in any other way shall be deemed sufficient if the court or justice by or before whom such summons, warrant, order, writ or other proceeding was issued or is returnable, or by or before whom

any proceeding subsequent to such service is to be had or taken, is of the opinion that the service has been such as to bring the summons, warrant, order, writ or other proceeding to the notice of the corporation. R.S.O. 1937, c. 294, s. 152.

135. In any prosecution, action or proceeding under this Act in which it is alleged that a corporation is or has been guilty of an offence against this Act or the regulations, the fact of the incorporation of that corporation shall be presumed without it being proved by the prosecutor, unless satisfactory proof is produced to the contrary. R.S.O. 1937, c. 294, s. 153. Presumption as to incorporation.

136.—(1) No order or warrant based upon a conviction, and no search warrant, shall upon any application by way of *certiorari* or motion to quash or *habeas corpus* be held insufficient or invalid for any irregularity, informality or insufficiency therein or by reason of any defect of form or substance. Informalities not to invalidate.

(2) The court or judge hearing any such application may amend the order, warrant or search warrant as justice may require. R.S.O. 1937, c. 294, s. 154. Amendment.

137. No motion to quash a conviction, order or warrant made under this Act shall be heard by the court or judge unless the notice of such motion has been served within 30 days from the date of the conviction or order. R.S.O. 1937, c. 294, s. 155. Notice of motion to quash conviction.

138.—(1) Any person convicted under this Act may, subject to the provisions hereinafter contained, appeal from the conviction to the judge of the county or district court of the county or district in which the conviction is made sitting in chambers without a jury if notice of such appeal is given to the prosecutor or complainant and to the convicting justice within 20 days of such conviction. Appeal to county or district judge.

(2) Such notice shall set forth the grounds on which the appeal is made and shall have endorsed thereon the address at which the appellant may be served with any notice or process in connection with any proceeding under this section or under section 139. Notice to set forth grounds and give address for service.

(3) There shall be delivered to the convicting justice, with such notice of appeal, an affidavit of the person convicted complying with the requirements set out in subsection 15. R.S.O. 1937, c. 294, s. 156 (1, 2). Affidavit to be delivered with notice of appeal.

Appeal after
payment of
fine and
costs.

(4) In case the appellant has paid the fine and costs imposed upon him by the convicting justice, he may, subject to the conditions set out in subsections 1, 2 and 3 and the deposit of \$50 with the justice to answer the respondent's costs, appeal against such conviction to the judge having jurisdiction in the matter who shall hear and determine such appeal as provided in subsections 11 and 12, and the deposit of the \$50 shall be made at the time of the delivery of the notice of appeal or within five days thereafter, and in default of such deposit, the appeal shall be dismissed.

Recognizance.

(5) Subject to subsection 6, the person convicted, if he is in custody, shall either remain in custody until the hearing of the appeal before the judge, or he may, notwithstanding any order of imprisonment either in the first instance, or in default of the payment of a fine, enter into a recognizance with two sufficient sureties in such sum or sums as the justice with the approval of the Crown attorney may fix, conditioned personally to appear before the judge and to try the appeal and abide by his judgment thereupon and also to pay any penalty in money and costs which the judge may order.

Money
deposit in
lieu of
recognizance.

(6) Where the appellant desires to deposit a sum of money instead of providing sureties, he may do so on entering into a recognizance on his own behalf and depositing an amount approved by the convicting justice and the Crown attorney, not being less than a surety would be required to become responsible for, and any money so deposited shall be available for the payment of any fine and costs which the judge may think fit to impose.

When
security
may be
withdrawn
or
cancelled.

(7) In any case in which security is provided, whether in money or otherwise, the security shall not be withdrawn until the time has elapsed for entering an appeal, and in case of a further appeal, the security shall remain until the final disposition of the case.

When re-
cognizance
entered
into.

(8) Upon the recognizance being entered into the justice shall liberate such person if in custody and shall immediately after such liberation, or if the appellant remains in custody, shall immediately after service of the notice of appeal upon the magistrate, deliver or transmit by registered post to the clerk of the county or district court, to be delivered after filing to the judge appealed to, the depositions and all other papers in the case, including notice of appeal and affidavit of the appellant with a certificate signed by the justice in the form hereinafter mentioned, and such certificate shall be deemed to be a part of the record.

(9) The certificate shall be in the following form:

Certificate
of Justice.

CERTIFICATE OF JUSTICE

A notice having been served upon me, the undersigned, of the intention of the defendant to appeal against my decision in the case set out in the information mentioned below, I herewith in pursuance of the Statute, return the following papers therein:

1. Notice of appeal and affidavit (*if any*).
2. Information.
3. Summons or warrant issued thereon.
4. The evidence.
5. The conviction or order (*as the case may be*).
6. Other papers (*if any*), naming them.

And I hereby certify to the judge of the county (*or district*) of.....that I have above truly set forth all the papers and documents in my custody or power relating to the matter set forth in the said notice of appeal.

Dated this.....day of....., 19.....

Justice

in and for the

(10) The appellant shall pay to the clerk of the court for his attendance and services in connection with such appeal the sum of \$2, and the same shall be taxed as costs in the cause. Fee of clerk of court.

(11) Within 30 days from the service of the notice of appeal the judge shall, on the application of any appellant, grant a summons calling upon all parties to attend before him at his chambers on the day and hour named therein, when the hearing of the appeal will be proceeded with; provided that if no such application is made within the 30 days, the judge, upon proof of the failure to make such application, shall order that the appeal be forthwith dismissed with costs. Summons to be issued by judge.

(12) The appeal shall be heard and determined upon the evidence and proceedings had and taken before the justice to be called the record, and the judge may, upon such hearing, make such order as he may think fit affirming, reversing or amending the conviction appealed from, and the conviction so made shall have the same effect and be enforced in the same way as if made by the justice whose conviction is appealed from, but the order or judgment of the judge shall not take effect until 15 days from the date thereof, provided that if the release of a person from custody has been ordered the judge may, with the approval of the Crown attorney, grant bail to the prisoner in such sum and with such surety or sureties as the judge, with the approval of the Crown attorney, may deem sufficient and may take the recognizance of the Appeal to be on evidence before Justice.

accused accordingly conditioned to abide by the decision of the Court of Appeal to which an appeal may be taken as provided by section 139.

Application
of Rev.
Stat., c. 379.

(13) The practice and procedure upon such appeals and all proceedings thereon shall be governed by *The Summary Convictions Act* so far as the same is not inconsistent with this Act.

Appeal from
order of
dismissal.

(14) Any informant or complainant dissatisfied with an order of dismissal made by a justice under this Act may, with the consent of the Attorney-General procured within 15 days of the date of the order of dismissal, appeal to the judge of the county or district court in the county or district in which the order complained of was made, and the proceedings shall be the same as nearly as may be as in the case of an appeal by a person convicted under this Act, and the judge shall have and may exercise the same powers as in the case of an appeal against a conviction, and may make such order as he may think fit and the deposit of security in such case shall be dispensed with.

Affidavits of
bona fides.

(15) No appeal shall lie from a conviction for any violation or contravention of any of the provisions of this Act or the regulations unless the party appealing delivers to the justice who tried the case with his notice of appeal, an affidavit that he did not by himself or by his agent, servant or employee or any other person with his knowledge or consent commit the offence charged in the information, and such affidavit shall negative the charge in the terms used in the conviction, and shall further negative the commission of the offence by the agent, servant or employee of the accused or any other person with his knowledge or consent, which affidavit shall be transmitted with the conviction and other papers to the judge to whom the appeal is made, provided that where the appeal is only as against the penalty imposed by the justice the affidavit required by this section shall not be necessary, and if the party appealing is a corporation, the affidavit may be made by the president, secretary or any other officer or employee of the corporation having knowledge of the facts.

Other
appeals not
allowed.

(16) Except as provided by this section, no appeal shall be taken against any conviction or order made by a justice under this Act. R.S.O. 1937, c. 294, s. 156 (3-16).

Appeal to
Court of
Appeal.

139.—(1) At any time within 15 days from the date of the judgment or order of any judge arising out of or under section 138, the Attorney-General may direct an appeal to the Court of Appeal from the judgment or order of a judge in any case arising out of or under section 138 in which the

Attorney-General certifies that he is of opinion that the matters in dispute are of sufficient importance to justify an appeal.

(2) Such appeal shall be had upon notice thereof to be given to the opposite party of the intention to appeal setting forth the grounds of such appeal. Notice of appeal.

(3) Service of the notice of appeal upon the solicitor for the opposite party or upon a grown-up person at the last known place of residence or business of the opposite party, or the sending of such notice by registered mail to the last known address of such party shall be deemed good and sufficient service. Service.

(4) Except so far as otherwise provided by this Act, the rules of practice of the Supreme Court relating to appeals to the Court of Appeal shall apply to appeals under this section. Practice on appeals.

(5) The clerk of the county or district court shall certify the judgment, conviction, orders and all other proceedings to the proper officer of the Supreme Court at Toronto for use upon appeal. Certifying proceedings to court.

(6) The Court of Appeal shall thereupon hear and determine the appeal and shall make such order for carrying into effect the judgment of the court as the court thinks fit. Hearing and determination of appeal.
R.S.O. 1937, c. 294, s. 157.

(7) The Chief Justice of Ontario or a judge of the Court of Appeal designated by him may, if he sees fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal and the provisions of the *Criminal Code* (Canada), and the rules made thereunder respecting bail pending the determination of an appeal shall apply *mutatis mutandis*. Bail pending appeal.
R.S.C., 1927, c. 36.
1942, c. 25, s. 9.

140. The purpose and intent of this Act and the regulations are to prohibit transactions in liquor that take place wholly within Ontario except under Government control as specifically provided by this Act and the regulations, and every section and provision of this Act and the regulations dealing with the importation, sale and disposition of liquor within Ontario through the instrumentality of a board, and otherwise provide the means by which such Government control shall be made effective, and nothing in this Act shall be construed as forbidding, affecting or regulating any transaction that is not subject to the authority of the Legislature. General intent.
R.S.O. 1937, c. 294, s. 159.

Proclamation
forbidding
possession
of liquor.

141. In any case of emergency the Lieutenant-Governor may issue a proclamation forbidding any person to have liquor in his possession within the area mentioned in such proclamation unless such person has been authorized in writing by the Board and given special permission thereby to have liquor within that area, and the proclamation may also authorize within such area the seizure without other warrant or authority and detention for such time as may be authorized of any liquor not had or kept with the permission of the Board within such area, and the proclamation may remain in force for such period as may be therein determined. R.S.O. 1937, c. 294, s. 161.

Effect of
Rev. Stat.,
c. 211.

142. The provisions of this Act and the regulations relating to the sale, purchase, having, supplying, serving and consuming of liquor shall be read and construed subject to *The Liquor Licence Act*. 1944, c. 34, s. 25, *part*; 1946, c. 46, ss. 8, 9.

C.T.A.
areas.
R.S.C., 1927,
c. 196.

143.—(1) This Act shall not apply in any area within Ontario in which the *Canada Temperance Act* is in force.

Application
of Act upon
C.T.A.
ceasing to
be in force.

(2) Upon the *Canada Temperance Act* ceasing to be in force in any area this Act shall, subject to section 67 of *The Liquor Licence Act*, apply in such area. 1947, c. 57, s. 6.

CHAPTER 211

The Liquor Licence Act**1. In this Act,**

- (a) "beer" means beer as defined in *The Liquor Control Interpretation Act*;
- (b) "Board" means The Liquor Licence Board of Ontario; Rev. Stat., c. 210.
- (c) "club" means a club,
 - (i) that is organized in the manner prescribed by the regulations,
 - (ii) that has such special accommodation, facilities and equipment as may be prescribed by the regulations,
 - (iii) that has for its objects definite purposes of a social, recreational or patriotic nature,
 - (iv) that has not less than 50 members,
 - (v) in which the members whose names and addresses are entered in a list of members and whose dues are paid in the manner prescribed by the rules or by-laws of the club may vote for all purposes of the club, and
 - (vi) that is not operated for pecuniary gain;
- (d) "dining lounge" means part of an establishment provided with special accommodation, facilities and equipment as prescribed by the regulations where in consideration of payment therefor food and such special services as may be prescribed by the regulations are regularly furnished to the public and liquor is served with meals;
- (e) "dining room" means part of an establishment provided with special accommodation, facilities and equipment as prescribed by the regulations and which is used exclusively for the serving of regular meals in

consideration of payment therefor as well as the sale of cigars, cigarettes, tobacco and other articles incidental to the sale of regular meals;

- (f) "establishment" means club, hotel, inn, public house, tavern, military mess, restaurant, railway car or steamship having premises which comply with the requirements of this Act and the regulations prescribing the qualifications of premises in respect of which licences may be issued;
- (g) "hotel" or "inn" means an establishment in regular operation provided with special accommodation, facilities and equipment as prescribed by the regulations, where in consideration of payment, food and lodging are regularly furnished to the public and having,
 - (i) in urban municipalities with a population of over 100,000, not less than 50 bedrooms,
 - (ii) in cities with a population of less than 100,000 and in towns, not less than 20 bedrooms, and
 - (iii) in any other part of Ontario, not less than 10 bedrooms,

and in every case having a sufficient number of bedrooms to serve the needs of the community where the hotel or inn is located;

- (h) "justice" means magistrate, and where no magistrate is available, means two or more justices of the peace;
- (i) "last revised list of the municipality" means the voters' list for the municipality as revised for the last election to the Assembly;
- (j) "licence" means a licence provided for and issued under this Act;
- (k) "licensing district" means a licensing district constituted under this Act;
- (l) "licensed premises" means premises for which a licence is issued under this Act;
- (m) "liquor" means liquor as defined in *The Liquor Control Act*;

- (n) "lounge" means part of an establishment provided with special accommodation, facilities and equipment as prescribed by the regulations, where in consideration of payment therefor liquor is served;
- (o) "military mess" includes a canteen and an institute in a building or camp used for the accommodation of the active or reserve units of the naval, military or air forces of Canada;
- (p) "Minister" means the member of the Executive Council to whom for the time being is assigned the administration of this Act;
- (q) "Ontario wine" means Ontario wine as defined in *The Liquor Control Act*; Rev. Stat.,
c. 210.
- (r) "public house" means an establishment or part of an establishment provided with special accommodation, facilities and equipment as prescribed by the regulations, where in consideration of payment therefor beer is served;
- (s) "railway car" means railway dining car, railway buffet car, railway club car and a drawing-room, bedroom or compartment in a railway sleeping car;
- (t) "regulations" means regulations made under this Act;
- (u) "restaurant" means an establishment that is exclusively engaged in the serving of regular meals to the public in consideration of payment therefor as well as the sale of cigars, cigarettes, tobacco and other articles incidental to the sale of regular meals;
- (v) "steamship" means any vessel propelled through water by any power other than muscular power that carries passengers and plies regularly between any port of Ontario and any port within or outside of Ontario;
- (w) "tavern" means an establishment having separate parts thereof that are provided with the special accommodation, facilities and equipment required by the regulations for at least two of the following classes of licences,
- (i) dining lounge licence,
 - (ii) dining room licence,

(iii) lounge licence,

(iv) public house licence;

Rev. Stat.,
c. 210.

(x) "wine" means wine as defined in *The Liquor Control Act*. 1946, c. 47, s. 1.

THE BOARD

The Liquor
Licence
Board of
Ontario.

2. The Liquor Licence Board of Ontario is continued and shall consist of three members appointed by the Lieutenant-Governor in Council. 1946, c. 47, s. 2, *amended*.

Chairman
and vice-
chairman.

3. The Lieutenant-Governor in Council may designate one of the members of the Board to be chairman thereof, and may designate another of the members to be vice-chairman. 1946, c. 47, s. 3.

Quorum.

4. Two members of the Board shall constitute a quorum. 1946, c. 47, s. 4.

Disqualifi-
cation.
members
and staff.

5. No member, registrar, deputy registrar, official, inspector or employee of the Board shall by himself, his partner or agent have any interest directly or indirectly in,

(a) a person, company, corporation, partnership, syndicate or other organization engaged in the manufacture, sale or distribution of liquor;

(b) any licensed premises; or

(c) any contract of any nature in respect of any licensed premises; or any premises upon which liquor is manufactured, produced, sold or kept for sale. 1946, c. 47, s. 5.

Salaries of
Board.

6. The members of the Board shall be paid such salaries as may be fixed by the Lieutenant-Governor in Council. 1946, c. 47, s. 6.

Staff.

7. The staff of the Board shall consist of a registrar, deputy registrars and such officials, inspectors and employees as the Board, with the approval of the Lieutenant-Governor in Council, may appoint. 1946, c. 47, s. 7.

Salaries
of staff.

8. The registrar, deputy registrars, officers, inspectors and employees of the Board shall be paid such salaries or other remuneration as the Board, with the approval of the Lieutenant-Governor in Council, may determine. 1946, c. 47, s. 8.

9. When the Board, by virtue of any power vested in it, appoints or directs any person other than a member of the staff of the Board to perform any service, such person shall be paid such sum for services and expenses as the Board, with the approval of the Lieutenant-Governor in Council, may determine. 1946, c. 47, s. 9. Special services.

10. The salaries or other remuneration of the members of the Board, the registrar, deputy registrars, officials, inspectors and employees and all other expenses of the Board shall be paid monthly by The Liquor Control Board of Ontario. 1946, c. 47, s. 10. Payment of salaries.

11. No member of the Board, registrar, deputy registrar, official, inspector or employee of the Board shall be compellable to give testimony in a court of civil jurisdiction with regard to information obtained by him in the discharge of his official duty, or to produce any files, papers, information, reports, correspondence or other documents relating to the business of the Board. 1946, c. 47, s. 11. Officials not compelled to testify.

12. The books and records of the Board shall at all times be subject to examination and audit by the provincial Auditor and such other person as the Lieutenant-Governor in Council may authorize in that behalf. 1946, c. 47, s. 12. Audit of books.

LICENSING DISTRICTS

13. The Lieutenant-Governor in Council may designate areas in Ontario as licensing districts. 1946, c. 47, s. 13. Licensing districts.

PROCEEDINGS BEFORE AND INVESTIGATIONS BY THE BOARD

14. Proceedings before the Board shall be instituted by application and the Board may make such orders, give such directions and issue such certificates as it may deem proper or as may be necessary or incidental to the exercise of its powers. 1946, c. 47, s. 14. Form of proceedings.

15. Where in the opinion of the Board any of the relevant circumstances relating to any application heard by it have altered or new evidence in connection therewith has become available, the Board may review any order made upon such application. 1946, c. 47, s. 15. Review of order.

16. For the purpose of any hearing or investigation the Board shall have the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise and to produce documents, records and Evidence.

things as is vested in the Supreme Court or a judge thereof for the trial of civil actions, provided that,

- (a) the provisions of rules of court or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses shall not apply;
- (b) no person shall be entitled to claim any privilege in respect of any document, record or thing asked for, given or produced on the ground that he might be incriminated or exposed to a penalty or to civil litigation thereby;
- (c) no person shall refuse to answer any question upon any ground of privilege, provided that a solicitor shall not be required to disclose any communications between himself and his client; and
- (d) no provisions of *The Evidence Act* shall exempt any bank or any officer or employee thereof from the operations of this section. 1946, c. 47, s. 16.

Rev. Stat.,
c. 119.

Investiga-
tions by
Board.

17.—(1) The Board may make such investigation as it deems expedient for the due administration of this Act, into or respecting,

- (a) any person or the affairs or conduct of any person;
- (b) any authority at any time issued or held under *The Liquor Control Act* or *The Liquor Authority Control Act, 1944*, or any licence at any time issued or held under this Act, or any premises in respect of which any such authority or licence was at any time issued or held; or
- (c) any matter pertaining to the sale or handling of or transactions in liquor.

Rev. Stat.,
c. 210.
1944, c. 33.

Idem.

(2) Where an investigation is or is about to be undertaken under this section the Board may by order,

- (a) authorize any person to seize and take possession of any documents, records or other property belonging to, in the possession or under the control of any person which the Board deems may be relevant to the investigation; and
- (b) appoint an accountant or other expert to examine documents, records, property or other matters which the Board deems may be relevant to the investigation. 1946, c. 47, s. 17.

18.—(1) In addition to any audit provided for by the regulations the Board may at any time authorize and direct any person to enter upon the premises where the books, accounts or records of or pertaining to any establishment, distillery, brewery or winery are kept or may be, and to inspect, study, audit, take extracts from or seize such books, accounts or other records. ^{Special audit.}

(2) Every person having any book, account or record in his possession or under his control who refuses or fails to produce it or to comply with a request made pursuant to an authorization or direction of the Board given under subsection 1, shall be guilty of an offence and liable to a penalty of not more than \$1,000. 1946, c. 47, s. 18. ^{Penalty.}

19. No order, direction, certificate or subpoena or other document of the Board shall be valid or binding unless it is issued in the name of the Board and sealed with the seal of the Board as attested by the signature of the registrar or a deputy registrar. 1946, c. 47, s. 19. ^{Validity of orders.}

20. The decisions, orders and rulings of the Board shall be final and shall not be questioned, reviewed or restrained by injunction, prohibition, mandamus, *quo warranto* proceedings or other process or proceedings in any court, or be removed by *certiorari* or otherwise into any court; provided that the Board may or at the request of any person having a proprietary interest in the matter before the Board, shall state a case on a point of law only as provided in Part XV of the *Criminal Code* (Canada). 1946, c. 47, s. 20. ^{Finality of orders. R.S.C., 1927, c. 36.}

LICENCES AND PERMITS

21.—(1) Licences may be issued under this Act for establishments as provided in section 24 and shall be of the following classes and for the purposes indicated, ^{Licences.}

- (a) "dining lounge licence" for the sale and consumption of liquor with meals;
- (b) "dining room licence" for the sale and consumption of beer and wine with meals;
- (c) "lounge licence" for the sale and consumption of liquor;
- (d) "public house licence" for the sale and consumption of beer in premises to which men only are admitted;

- (e) "public house licence" for the sale and consumption of beer in premises to which women only or men and women are admitted.

Expiration
of licences.

(2) Subject to the provisions of this Act relating to the renewal, suspension and cancellation of licences, every licence shall expire at midnight on the 31st day of March next following the issue thereof.

Number of
licences to
be issued in
municipality.

(3) The Board may restrict the number of licences or of any class of licences which it issues in any municipality. 1946, c. 47, s. 21.

Banquet or
entertainment
permits.

22.—(1) The Board may issue banquet or entertainment permits for the serving of liquor on designated premises for special occasions as provided by the regulations and may issue any such permit upon such terms and subject to such conditions as it may prescribe.

Application.

(2) Application for a banquet or entertainment permit may be made to the registrar or to the deputy registrar for the licensing district in which the banquet or entertainment is to be held. 1946, c. 47, s. 22.

Mess and
canteen
permit.

23.—(1) The Board may issue a mess and canteen permit to the officer commanding any unit, station or establishment of the naval, military or air forces of Canada which is designated to the Board by the Minister of National Defence for Canada authorizing him to purchase liquor for consumption in messes and canteens under his control.

Provincial
jurisdiction
not
conferred.

(2) Neither the application for a permit, the issue of a permit nor the designation of a unit, station or establishment by the Minister of National Defence for Canada shall confer any provincial jurisdiction with respect to such unit, station or establishment or in respect of any mess or canteen.

Jurisdiction
of Board not
interfered
with.

(3) Nothing in this section shall be construed as interfering with the jurisdiction of the Board with respect to a military mess in respect of which a licence is issued under this Act. 1947, c. 58, s. 1.

Licences,
issue of.

24.—(1) The Board may, subject to this Act and the regulations and to the local option provisions of any Act of the Parliament of Canada or of the Legislature, issue to the owner of an establishment of any of the following classes, a licence or licences of one or more of the classes indicated:

- (a) Hotels or inns having special accommodation, facilities and equipment prescribed by the regulations for the

designated parts of the establishment in respect of which each licence is issued,

(i) dining lounge licence,

(ii) dining room licence,

(iii) lounge licence,

(iv) public house licence,

provided that the Board shall not issue a dining lounge or lounge licence to an hotel situated in a municipality having a population of less than 50,000 according to the last revised assessment roll, until an affirmative vote has been taken on question 7 or 8, as the case may be, of subsection 1 of section 69, and section 69 shall apply *mutatis mutandis* to such vote whether or not a by-law mentioned in section 68 is in force therein.

(b) Taverns having special accommodation, facilities and equipment prescribed by the regulations for the designated parts of the establishment in respect of which each licence is issued,

(i) dining lounge licence,

(ii) dining room licence,

(iii) lounge licence,

(iv) public house licence,

provided that the Board shall not issue a dining lounge or lounge licence to a tavern situated in a municipality having a population of less than 50,000 according to the last revised assessment roll, until an affirmative vote has been taken on question 7 or 8, as the case may be, of subsection 1 of section 69, and section 69 shall apply *mutatis mutandis* to such vote whether or not a by-law mentioned in section 68 is in force therein. 1946, c. 47, s. 23 (1), cls. (a, b); 1947, c. 59, s. 1 (1).

(c) Clubs, military messes, railway cars and steamships having special accommodation, facilities and equipment prescribed by the regulations for the designated parts of the establishment in respect of which each licence is issued,

(i) dining lounge licence,

(ii) dining room licence,

(iii) lounge licence,

(iv) public house licence.

(d) Restaurants, having special accommodation, facilities and equipment prescribed by the regulations for the designated parts of the establishment in respect of which the licence is issued, a dining room licence.

(e) Public houses, having special accommodation, facilities and equipment prescribed by the regulations for the designated parts of the establishment in respect of which the licence is issued, a public house licence. 1946, c. 47, s. 23 (1), cls. (c-e).

Dining
room or
public house
licence.

(2) The Board shall not issue a dining room licence or a public house licence in a municipality having a population of less than 50,000 according to the last revised assessment roll, except in the case of,

1944, c. 33.

(a) an establishment in respect of which an authority under *The Liquor Authority Control Act, 1944*, including therein a privilege corresponding to the licence issued under this Act, was held on the 1st day of January, 1947; or

(b) an establishment classified as an hotel, club, military mess, railway car or steamship,

until an affirmative vote has been taken on question 4, 5 or 6, as the case may be, of subsection 1 of section 69, and section 69 shall apply *mutatis mutandis* to such vote whether or not a by-law mentioned in section 68 is in force therein. 1947, c. 58, s. 2 (2); 1947, c. 59, s. 1 (2).

Scope of
licence
may be
restricted.

(3) The Board may restrict the scope or effect of any licence or may issue a licence upon such terms and subject to such further conditions as it may prescribe. 1946, c. 47, s. 23 (2).

Classifica-
tion of
establish-
ments.

25. The Board shall classify all establishments in respect of which a licence is applied for or issued. 1946, c. 47, s. 24.

Classifica-
tion of
establish-
ments
authorized
under 1944,
c. 33.

26.—(1) The Board may, for the purposes of this Act, classify any establishment in respect of which an authority under *The Liquor Authority Control Act, 1944* was held on the 1st day of January, 1947.

Classifica-
tion as
hotel.

(2) Where in the opinion of the Board any establishment in respect of which an authority under *The Liquor Authority Control Act, 1944* was held on the 1st day of January, 1947, is serving the needs of the community in the matter of bedroom

accommodation, the Board may classify it as an hotel or inn notwithstanding that it does not comply with subclause i, ii or iii of clause g of section 1, but such classification and any licence issued pursuant thereto may be made and issued for a limited time and from time to time and upon such terms and conditions as the Board may deem advisable. 1946, c. 47, s. 25.

27. Except as permitted by the Board, bedroom accommodation which is available to the public in an establishment that is classified by the Board as a public house, restaurant or tavern, shall be rented only for weekly or longer periods. 1946, c. 47, s. 26; 1947, c. 58, s. 3.

Bedroom
accommo-
dation.

28.—(1) No licence may be issued or renewed under this Act to any person who, Where issue of licence prohibited.

- (a) in the opinion of the Board, is not a fit and proper person, or is not the true owner of the business carried on at the premises for which the licence is sought;
- (b) has been convicted of any offence against such of the laws of Canada or Ontario as the regulations may prescribe;
- (c) is disqualified under this Act or the regulations or has not complied with the requirements thereof;
- (d) as a constable or other police officer or in any other capacity is engaged in law enforcement or to any member of the family of any such person residing with him;
- (e) if an individual, is not a British subject;
- (f) if a corporation, does not comply with this Act and the regulations; or
- (g) if a club, does not comply with this Act and the regulations.

(2) Every person who applies for the issue or renewal of a licence and who fails to make full disclosure in the form of application regarding any of the matters referred to in this section and subsection 1 of section 29 shall be guilty of an offence. 1946, c. 47, s. 27.

Failure to
disclose.

29.—(1) No licence may be issued or renewed under this Act, Where issue of licence prohibited.

- (a) to any person who is under agreement with any person to sell the liquor of any manufacturer;

- (b) to any manufacturer of liquor, or his agent, or to any person who is so associated or connected therewith, or financially interested therein as to be likely to promote the sale thereof;
- (c) to any person who by reason of any agreement, arrangement, concession, obligation or understanding, verbal or written, or direct or indirect, with any other person is or by reason thereof may be likely to promote the sale of liquor of any manufacturer; or
- (d) for any premises in which any manufacturer of liquor has any interest, whether freehold or leasehold, or by way of mortgage or charge or other encumbrance, or by way of mortgage, lien or charge upon any chattel property therein and whether such interest is direct or indirect or contingent or by way of suretyship or guarantee.

Failure to disclose.

(2) If the existence of any of the conditions indicated in subsection 1, whether such condition existed at the time of the issue of the licence or arises thereafter, is not disclosed to the Board, the non-disclosure shall be an offence and no action or other proceeding shall be brought or commenced in any court in Ontario in respect of such agreement, arrangement, concession, obligation, undertaking or interest. 1946, c. 47, s. 28.

Information re corporations.

30. The directors of an incorporated company that applies for the issue, renewal or transfer to it of a licence, shall at the time of making the application or at any other time during the term of the licence, when ordered by the Board, produce such particulars of the officers and shareholders of the company as may be required. 1946, c. 47, s. 29.

RIGHTS IN LICENCE

Licence not to confer any vested right.

31. No person shall enjoy a vested right in the continuance of a licence, and upon the issue, renewal, transfer, cancellation or suspension thereof the value of a licence shall not be capitalized but shall become the property of the Crown in right of Ontario. 1946, c. 47, s. 30.

ANNUAL MEETING

Annual meeting.

32. The Board shall hold an annual meeting at a convenient place determined by the Board in each licensing district between the 1st day of October and the 31st day of January in the year next following. 1946, c. 47, s. 31.

33. Notice of the annual meeting in the form prescribed by the regulations shall be published in a newspaper having a general circulation in the licensing district at least 10 days before the meeting. 1946, c. 47, s. 32. Notice of annual meeting.

34. The Board shall at the annual meeting hear and determine applications for the renewal of licences. 1946, c. 47, s. 33. Business of Board.

SPECIAL MEETINGS

35. The Board may hold such special meetings as it deems necessary for the hearing and determination of, Special meetings.

- (a) applications for new licences;
 - (b) deferred applications for renewals of licences;
 - (c) proceedings involving the cancellation or suspension of a licence;
 - (d) applications for transfers of licences;
 - (e) proceedings in compensation matters;
 - (f) applications for revocation of the suspension of a licence;
 - (g) applications for review of orders of the Board; and
 - (h) other matters within the jurisdiction of the Board.
- 1946, c. 47, s. 34.

PROCEEDINGS ON APPLICATIONS

36. Every application shall be in the form prescribed by the regulations and shall be filed with the deputy registrar of the licensing district in which are located the premises concerning which the application is made not less than 10 days before the meeting of the Board at which the application is to be heard. 1946, c. 47, s. 35. Filing of application.

37. Notice of the application for a licence in the form prescribed by the regulations shall be published twice, Publication of notice.

- (a) in a newspaper published in the municipality or community in which the premises for which the licence is sought are situated and having a general circulation in such municipality or community; or
- (b) where no newspaper is published in the municipality or community in which such premises are situated, in a newspaper having a general circulation in such municipality or community,

and such publications shall be at least five clear days apart and the second of such publications shall be not less than ten clear days before the meeting of the Board at which the application is to be heard. 1946, c. 47, s. 36; 1947, c. 59, s. 2.

Personal
application.

38. A licence shall not be issued by the Board unless the applicant therefor appears in person, but an incorporated company may be represented by a director, official or manager duly certified as such to the satisfaction of the Board. 1946, c. 47, s. 37.

Renewals.

39. Unless otherwise directed by the Board it shall not be necessary for an applicant for the renewal of a licence to publish notice of his application or to appear in person before the Board. 1946, c. 47, s. 38.

Objections.

40.—(1) Any person resident in a licensing district where the premises concerning which the application is made are situated, may object to the application and the grounds of objection in writing shall be filed with the deputy registrar at least 10 days before the meeting at which the application is to be heard.

Applicant
to be
notified.

(2) Upon receipt of any objection to an application, the deputy registrar shall notify the applicant thereof. 1946, c. 47, s. 39.

CANCELLATION AND SUSPENSION OF LICENCES

Application
for cancella-
tion.

41.—(1) Upon an application being made to the Board for the cancellation or suspension of a licence, the Board may in its discretion by notice in writing require the holder of the licence to show cause to the Board why the licence should not be cancelled or suspended, and in the event of the failure of the holder of the licence to show cause, the Board shall take such action as the circumstances may require.

Notice to
licence
holder.

(2) The notice required by subsection 1 shall be sent by prepaid post by the Board to the licence holder at his last known address at least seven days before the date of the meeting. 1946, c. 47, s. 40.

Powers of
Board at
hearing.

42. Upon the hearing of an application for suspension or cancellation of a licence the Board may dismiss the application or make such order as it deems proper and in any such order may,

- (a) suspend the licence for an indefinite period;
- (b) cancel the licence;

- (c) disqualify any person from holding a licence;
- (d) disqualify any premises from being eligible as licensed premises; and
- (e) impose such conditions upon the holder of the licence as the circumstances may require. 1946, c. 47, s. 41.

43. The Board shall cancel a licence,

When licence
to be
cancelled.

- (a) if the licence holder persistently fails to comply with this Act or *The Liquor Control Act* or the regulations hereunder or thereunder; or
- (b) if the licence holder persistently fails to carry out the orders of the Board, The Liquor Control Board of Ontario or the Fire Marshal of Ontario; or
- (c) if the licence holder persistently fails to keep the licensed premises in a clean and sanitary condition; or
- (d) if the licence holder persistently fails to comply with any municipal by-law affecting the licensed premises; or
- (e) if any of the circumstances exist which under subsection 1 of section 28 or subsection 1 of section 29 prevent the issue of a licence. 1946, c. 47, s. 42, amended.

Rev. Stat.,
c. 210.

TRANSFER OF LICENCES

44.—(1) No licence may be sold, leased, assigned, charged, transferred or otherwise dealt in or disposed of except with the consent in writing of the Board, and the Board shall not under any circumstances be bound to give consent.

Transfer
of licences.

(2) Upon any transfer of a licence the vendor shall pay to the Treasurer of Ontario the monopoly value of the licence at the time of sale to be determined by a fee, schedule, or other method of valuation as may be prescribed by the regulations, provided that in no event shall the vendor be required to pay a sum upon a transfer which will operate to reduce the vendor's interest after such payment below the value of the actual capital investment of the vendor at the time of the transfer of the licence.

Monopoly
value to be
paid to
Treasurer
of Ontario.

(3) The Board may in its discretion require the directors of any incorporated company which is the holder of a licence to present to the Board for approval any transfer of shares of its capital stock, and where in the opinion of the Board a substantial interest is transferred, the provisions of subsection 2 shall apply *mutatis mutandis*. 1946, c. 47, s. 43,

Transfer of
shares in
incorporated
company.

Amount payable to Treasurer to constitute debt due Ontario.

(4) The amount payable to the Treasurer of Ontario under subsection 2 shall constitute a debt due to the Treasurer of Ontario and shall be recoverable by action in any court of competent jurisdiction.

Registration of notice.

(5) A notice in the prescribed form of the amount payable under subsection 2 may be registered against the lands upon which the premises in respect of which the licence was issued are situate in the proper registry or land titles office, and upon registration the notice shall operate as a charge against such lands and the buildings thereon.

Transfer of licence, when deemed final.

(6) The transfer of a licence shall not be deemed to be final until the amount of the monopoly value has been paid in full. 1947, c. 58, s. 4.

Power of Board to purchase premises.

45.—(1) Subject to the approval of the Lieutenant-Governor in Council, the Board shall have the right to purchase any licensed premises or any shareholding interest therein at the price and on the terms stipulated in any agreement for sale, offer for sale or transfer coming before the Board for its consent under section 44, and the Board may exercise such right by serving notice in writing thereof upon the vendor.

Payment of purchase price.

(2) Whenever the Board has exercised the right of purchase mentioned in subsection 1, the purchase price or any portion thereof necessary to complete the transaction shall be paid by the Treasurer of Ontario out of the net profits of The Liquor Control Board of Ontario upon the requisition of the Board.

Board may sell licensed premises.

(3) Subject to the approval of the Lieutenant-Governor in Council, the Board may sell any licensed premises or any shareholding interest acquired under this section. 1946, c. 47, s. 44.

COMPENSATION FOR DISQUALIFICATION

Compensation may be awarded.

46.—(1) Where the Board disqualifies any premises from holding a licence for a cause that is not the fault of or is beyond the control of the licence holder, it may, subject to the approval of the Lieutenant-Governor in Council, award by way of compensation to the owner of the premises or to the holder of the licence, as the Board sees fit, a sum not exceeding the amount by which the value of the capital investment is depreciated by reason of the disqualification of such premises, which sum shall be determined by a fee, schedule or other method of valuation prescribed by the regulations.

Payment.

(2) The Liquor Control Board of Ontario shall pay the compensation mentioned in subsection 1 upon the requisition of the Board. 1946, c. 47, s. 45.

REVENUE

47. All moneys received by the Board from licence fees or otherwise arising in the administration of this Act shall be paid to The Liquor Control Board of Ontario. 1946, c. 47, s. 46. Payment of revenue.

SALE OF LIQUOR IN LICENSED PREMISES

48. No liquor may be kept for sale, sold or served in any licensed premises except such liquor as may be, What liquor may be sold.

(a) prescribed in the licence; and

(b) purchased by the holder of the licence in accordance with *The Liquor Control Act* and the regulations thereunder. 1946, c. 47, s. 47. Rev. Stat., c. 210.

49. The Board shall in every licence issued specify the part of the establishment to which the sale, serving and consumption of liquor is restricted and confined. 1946, c. 47, s. 48. Sale of liquor in specified places only.

50. Except as permitted by the Board, where two types of public house licences are issued for any establishment, Public house licences, where two issued for establishment.

(a) there shall be no internal means of communication between the premises operated under each of such licences;

(b) each of such premises shall have separate entrances for the public;

(c) separate dispensing and other equipment shall be used in serving the public using each of such premises; and

(d) the employees employed in serving the public in each of such premises shall not enter the other of such premises. 1946, c. 47, s. 49; 1947, c. 58, s. 5.

51.—(1) No liquor shall knowingly be sold or served in or at any licensed premises to any person who is under the age of 21 years. Minors.

(2) No liquor shall be sold to a person who is apparently under the age of 21 years, and in any prosecution for a violation of this subsection the justice shall determine from the appearance of any such person and other relevant circumstances whether he is apparently under the age of 21 years. Idem.

Intoxicated persons.

(3) No liquor shall be sold on or at any licensed premises to or for any person who is apparently in an intoxicated condition.

Conduct of premises.

(4) No person holding a licence under this Act shall permit or suffer in the premises for which the licence is issued,

- (a) any constable or other police officer while on duty to consume any liquor;
- (b) any gambling, drunkenness or any riotous, quarrelsome, violent or disorderly conduct to take place;
- (c) any person of notoriously bad character to remain; or
- (d) any slot machine or any device used for gambling to be placed, kept or maintained.

Minors on premises.

(5) No person holding a licence under this Act shall permit or suffer any person under or apparently under the age of 21 years to enter or be upon that part of the licensed premises where liquor is sold or kept for sale, except in a dining room or dining lounge.

Objectionable persons.

(6) Any person holding a licence under this Act, who has reasonable grounds to suspect from the conduct of any person who has come upon the premises in respect of which such licence is issued, that such person, although not of notoriously bad character, is present for some improper purpose or is committing an offence against this Act or the regulations, may request such person to leave the licensed premises immediately, and unless the request is forthwith complied with such person may be forcibly removed. 1946, c. 47, s. 50.

Minors.

52.—(1) No person under the age of 21 years shall have, purchase or consume liquor on any licensed premises.

Idem.

(2) Any person under the age of 21 years who enters or is found upon that part of a licensed premises where liquor is sold or kept for sale, except a dining room or dining lounge, shall be guilty of an offence against this Act. 1946, c. 47, s. 51.

Sale and consumption.

53. No liquor may be sold or served to any person or consumed by him in any licensed premises, except in accordance with the regulations. 1946, c. 47, s. 52.

Neglecting children.

54. No person who is a parent, guardian or head of a family having the care, custody and control of a child under the age of eight years shall enter or remain upon any premises where liquor is sold or kept for sale while such child is unattended by a competent person. 1946, c. 47, s. 53.

55. No distillery, brewery, winery or person shall, either ^{Inducement to licensees.} directly or indirectly, offer or give any financial or material inducement to any licensee or his agent or employee for the purpose of increasing the sale or distribution of any brand of liquor, whether such inducement is by way of discount, rebate, sale under the established price for products of the same or a similar quantity, or by the installation of equipment or other form of payment or benefit. 1946, c. 47, s. 54.

56. No person to whom the sale of intoxicating liquor is ^{Sales to interdicted persons prohibited.} prohibited by statute of Canada or Ontario and no interdicted person shall enter on or be permitted or suffered to remain in that part of any licensed premises where liquor is sold, except in a dining room or dining lounge. 1946, c. 47, s. 55.

57. Any constable or other police officer may arrest ^{Arrest without warrant.} without warrant any person whom he finds committing an offence against this Act or the regulations. 1946, c. 47, s. 57.

PENALTIES AND PROCEDURE

58. Every person who violates any of the provisions of ^{Offences.} this Act or the regulations shall be guilty of an offence against this Act whether otherwise so declared or not. 1946, c. 47, s. 58.

59.—(1) Every person who violates subsection 1 of sec- ^{Penalties.} tion 51 shall be guilty of an offence and shall for the first offence be imprisoned for a term of not less than one month and not more than three months, and for a second or subsequent offence be imprisoned for a term of not less than four months and not more than twelve months.

(2) Every person who violates section 55 shall be guilty ^{Idem.} of an offence and liable to a penalty of not more than \$10,000.

(3) Every person who violates any of the provisions of this ^{Idem.} Act or the regulations, other than subsection 1 of section 51 or section 55, shall be guilty of an offence and shall be liable for a first offence to a fine of not less than \$10 and not more than \$500 and in default of immediate payment shall be imprisoned for a term of not more than two months, or to imprisonment for a term of not more than thirty days, or to both fine and imprisonment, and for a second or subsequent offence shall be imprisoned for a term of not more than three months.

Corporations.

(4) Where an offender convicted of an offence referred to in this section, other than a violation of section 55, is a corporation it shall be liable to a penalty of not less than \$1,000 and not more than \$3,000. 1946, c. 47, s. 59.

Onus.

60. In the prosecution of any offence under this Act in which possession of liquor is an element of the offence, upon *prima facie* proof of such possession, unless the person charged with the offence proves that he did not commit the offence, he may be convicted thereof. 1946, c. 47, s. 60.

Removal of liquor packages.

61. Proof of the removal of any liquor from any licensed premises in any packages shall be *prima facie* evidence against the person holding the licence for such premises of the sale of liquor contrary to this Act or *The Liquor Control Act*. 1946, c. 47, s. 61.

Rev. Stat., c. 210.

Analysis.

62. In any prosecution under this Act or the regulations, upon production by a constable or other police officer of a certificate or report signed or purporting to be signed by a federal or provincial analyst as to the analysis or ingredients of any liquor or other fluid or any preparation, compound or substance, the certificate or report shall be conclusive evidence of the facts stated in the certificate or report and of the authority of the person giving or making it without any proof of appointment or signature. 1946, c. 47, s. 62.

Inference as to intoxicating liquor.

63. The justice trying a case shall be at liberty to infer, in the absence of proof to the contrary, that the liquor in question is intoxicating from the fact that a witness describes it as intoxicating, or by a name which is commonly applied to an intoxicating liquor. 1946, c. 47, s. 63.

Recovery of penalties.

64.—(1) The penalties imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act* and the provisions of that Act shall apply to prosecutions thereunder, provided that the provisions of *The Liquor Control Act* relating to appeals shall apply to appeals under this Act.

Rev. Stat., cc. 379, 210.

Fines to be paid to Liquor Control Board.

(2) Subject to section 83, all money penalties imposed under this Act or the regulations, after deducting all necessary costs, shall be paid by the justice to The Liquor Control Board of Ontario. 1946, c. 47, s. 64.

CIVIL LIABILITY

Civil liability.

65. Where any person or his servant or agent sells liquor to or for a person whose condition is such that the consumption of liquor would apparently intoxicate him or increase his

intoxication so that he would be in danger of causing injury to his person or injury or damage to the person or property of others, if the person to or for whom the liquor is sold while so intoxicated,

- (a) commits suicide or meets death by accident, an action Rev. Stat., c. 132. under *The Fatal Accidents Act* lies against the person who or whose servant or agent sold the liquor; or
- (b) causes injury or damage to the person or property of another person, such other person is entitled to recover an amount to compensate him for his injury or damage from the person who or whose servant or agent sold the liquor. 1946, c. 47, s. 65.

EMPLOYEES OF LICENCE HOLDERS

66.—(1) The Board may require every person who, being Employees of licence holders. an employee of a person who operates licensed premises, is in any way engaged in selling or serving liquor, to obtain an employee's licence from the Board in accordance with the regulations.

(2) Where, as provided by subsection 1, employees are Sale by licensed employees. required by the Board to obtain an employee's licence, no person who is not so licensed may be employed in the sale or serving of liquor in any licensed premises. 1946, c. 47, s. 66.

LOCAL OPTION

67.—(1) None of the provisions of this Act, except Areas where C.T.A. in force. R.S.C., 1927, c. 196. section 23, shall apply in any area in which the *Canada Temperance Act* is in force.

(2) Upon the *Canada Temperance Act* ceasing to be in force Application of Act upon C.T.A. ceasing to be in force. in any area this Act shall apply in such area, provided that,

- (a) in an area where a by-law prohibiting the sale of R.S.C., 1927, c. 196; 1916, c. 50. liquor by retail passed under any Act of the Legislature was in force when the *Canada Temperance Act* or *The Ontario Temperance Act* came into force, no government stores for the sale of liquor or for the sale of beer only shall be established, no Ontario wine stores shall be authorized and no licences shall be issued until a vote has been taken in the manner provided in section 69; and
- (b) in an area where no by-law prohibiting the sale of liquor by retail passed under any Act of the Legislature was in force when the *Canada Temperance Act* or *The Ontario Temperance Act* came into force, no

licences shall be issued in respect of an establishment classified as an hotel, tavern, restaurant or public house until a vote has been taken in the manner provided in section 69.

Machinery
for vote.

(3) In every area to which subsection 2 applies the provisions of section 69 shall apply *mutatis mutandis* to a vote referred to in subsection 2 which is taken in any municipality therein, notwithstanding that a by-law mentioned in section 68 is not in force in such municipality. 1947, c. 59, s. 3.

Government
stores and
wine stores
not to be
established
in certain
districts.

1916, c. 50;
Rev. Stat.,
1914, c. 215.

68. Except as provided by this Act and the regulations, no government store for the sale of liquor shall be established, no Ontario wine store shall be authorized and no premises shall be licensed in any municipality or portion of a municipality in which at the time of the coming into force of *The Ontario Temperance Act* a by-law passed under *The Liquor Licence Act* or any other Act was in force prohibiting the sale of liquor by retail until a vote has been taken in the manner provided in section 69. 1946, c. 47, s. 68.

Submission
of question.

69.—(1) The council of any municipality in which a by-law mentioned in section 68 is in force may submit to a vote of the persons qualified to be entered on the voters' list and to vote at elections to the Assembly in the municipality, any of the following questions:

1. Are you in favour of the establishment of government stores for the sale of liquor?
2. Are you in favour of the establishment of government stores for the sale of beer only for residence consumption?
3. Are you in favour of the authorization of Ontario wine stores for the sale of Ontario wine only for residence consumption?
4. Are you in favour of the sale of beer only under a public house licence for consumption on licensed premises to which women are admitted?
5. Are you in favour of the sale of beer only under a public house licence for consumption on licensed premises to which men only are admitted?
6. Are you in favour of the sale of beer and wine only under a dining room licence for consumption with meals on licensed premises?

7. Are you in favour of the sale of liquor under a dining lounge licence for consumption with meals on licensed premises?

8. Are you in favour of the sale of liquor under a lounge licence for consumption on licensed premises?

(2) Where a petition in writing signed by at least 25 per cent of the total number of persons appearing by the last revised list of the municipality to be resident in the municipality and qualified to vote at elections to the Assembly, requesting the council to submit one or more of the questions set out in subsection 1 is filed with the clerk of the municipality and with the Board, the council shall submit such question or questions to a vote of the electors. Petition requesting submission of questions.

(3) Where three-fifths of the electors voting on the question vote in the affirmative, it shall be lawful to establish government stores, authorize Ontario wine stores or issue licences within the municipality accordingly. 1946, c. 47, s. 69. Where affirmative vote polled.

70.—(1) Where a government store is established, an Ontario wine store authorized, or premises licensed in any municipality, the council may, and on petition as provided in section 69, which section shall apply *mutatis mutandis*, shall submit to the electors whichever of the following questions may be applicable: Submission of questions as to continuance of stores.

1. Are you in favour of the continuance of government stores for the sale of liquor?
2. Are you in favour of the continuance of government stores for the sale of beer only for residence consumption?
3. Are you in favour of the continuance of the authorization of Ontario wine stores for the sale of Ontario wine only for residence consumption?
4. Are you in favour of the continuance of the sale of beer only under a public house licence for consumption on licensed premises to which women are admitted?
5. Are you in favour of the continuance of the sale of beer only under a public house licence for consumption on licensed premises to which men only are admitted?
6. Are you in favour of the continuance of the sale of beer and wine only under a dining room licence for consumption with meals on licensed premises?

7. Are you in favour of the continuance of the sale of liquor under a dining lounge licence for consumption with meals on licensed premises?
8. Are you in favour of the continuance of the sale of liquor under a lounge licence for consumption on licensed premises?

Where
negative
vote polled.

(2) Where three-fifths of the electors voting on the question or questions vote in the negative, from and after the 31st day of March in the following year, any government store established in the municipality shall be closed, the authority of any Ontario wine store authorized in the municipality shall be terminated or licences of any class for premises in the municipality shall be discontinued, as the case may be, in accordance with the question or questions submitted and voted upon. 1946, c. 47, s. 70.

Questions
to be
submitted.

71. Where petitions are presented praying for the submission of a definite question or set of questions, the question or questions to be submitted shall be that or those asked for in the first petition filed, unless the Board otherwise directs. 1946, c. 47, s. 71.

Questions
not to be
submitted
again for
three years.

72. Where a question is submitted in a municipality under section 69 or 70, neither that question nor any other question shall be submitted in the municipality until after the expiration of a period of three years from the date of such submission; provided that the submission of question 4 set out in subsection 1 of section 70, within two years of the 1st day of January, 1947, shall not prevent the submission of any other question during the period of three years from the date of such submission. 1946, c. 47, s. 72 (1).

Appoint-
ment of
managers
for vote.

73.—(1) At least five weeks before the taking of a vote upon any question under section 69 or 70 the electors interested in obtaining an affirmative answer and a negative answer respectively to the question or questions, may notify the returning officer in writing, signed by at least 25 electors, that they have appointed a manager for their side of the question or questions and the manager may appoint agents at the polling places and generally shall have all the powers and perform all the duties and be subject to the like provisions as far as practicable as a candidate at an election to the Assembly, and in case more than one person is named as manager, the first person named on either side shall be manager.

Notice of
filing of
petition.

(2) When any petition has been filed with the clerk of the municipality pursuant to section 69 or 70, the clerk shall give

notice in writing of such filing to each of the managers, and the managers shall, for a period of four weeks from the date of such notice, be entitled to examine and inspect the petition. 1946, c. 47, s. 73.

74. The day fixed for taking the vote on any question or questions shall be the day upon which under *The Municipal Act*, or any by-law passed under that Act, a poll would be held at the annual election of members of the council of the municipality unless the Board fixes some other day and notifies the clerk of the municipality to that effect; but a poll shall not be held on any such question or questions until after the expiration of two months from the passing of a by-law for submitting the question or questions where the council submits the question or questions without a petition, nor until after the expiration of two months from the filing of the petition, as the case may be. 1946, c. 47, s. 74.

Date of
polling.
Rev. Stat.,
c. 243.

75. The persons qualified to vote upon a question or questions shall be such persons as are named upon the polling list and would be qualified in other respects to vote at an election to the Assembly held on the day fixed for taking the poll upon the question or questions; provided that in the event of the taking of a vote under section 70, notwithstanding anything contained in any Act of the Legislature, persons resident in any portion of a municipality in which at the time of the coming into force of *The Ontario Temperance Act* a by-law under *The Liquor Licence Act* or under any other Act, was in force prohibiting the sale of liquor by retail, shall not be entitled to sign a petition pursuant to this section, except a petition respecting only such portion of the municipality, and shall not be entitled to vote on the said question or questions until a vote has been taken in such portion of the municipality on one or more of the questions set out in subsection 1 of section 69, and three-fifths of the electors voting on such question or questions have voted in the affirmative. 1946, c. 47, s. 75.

Who may
vote.
1916, c. 50.
Rev. Stat.,
1914, c. 215.

76.—(1) Except as otherwise provided by this Act, the provisions of *The Election Act* and *The Voters' Lists Act* respecting,

Application
of general
law.
Rev. Stat.,
cc. 112, 414.

- (a) the preparation and revision of the lists;
- (b) the time and manner of holding the poll;
- (c) the holding of advance polls;
- (d) the forms to be used and the oaths to be administered;

- (e) the powers and duties of returning officers, deputy returning officers and poll clerks,

and all the provisions relating to corrupt practices, illegal acts, offences and penalties and their prosecutions shall apply to the taking of a vote submitted under this Act.

Directions
as to taking
vote.

(2) Subject to the approval of the Lieutenant-Governor in Council, the Chief Election Officer shall give such directions and make such regulations and prepare such forms as may appear to him to be necessary in carrying out sections 68 to 80 and for the guidance of returning officers and other officers and persons employed in the taking of the vote, and may modify or alter any of the provisions of *The Election Act* and *The Voters' Lists Act* when compliance therewith appears to be inconvenient, impracticable or unnecessary and may make due provision for circumstances which may arise and which are not provided for or contemplated by sections 68 to 80.

Rev. Stat.,
cc. 112, 414.

Forms.

(3) The forms to be used at the taking of the vote upon a question or questions shall be the same as nearly as may be as the forms used at an election to the Assembly, but such forms may be modified and altered to such extent as may be necessary.

Clerk of
revision.

(4) The clerk of the municipality shall perform the duties imposed upon the clerk of the revising officer by Part III of *The Voters' Lists Act*. 1946, c. 47, s. 76.

Revision
of lists.

77.—(1) The voters' lists shall be revised as provided in *The Voters' Lists Act* with respect to the revision of the lists at an election to the Assembly, and polling lists shall be prepared as provided by *The Election Act*, and the chairman of the election board may generally take all the proceedings which may be taken by the board in the case of an election to the Assembly.

Rev. Stat.,
cc. 414, 112.

Chairman's
fees.

(2) The chairman shall be entitled to a fee of \$10 for every day upon which a sitting is actually held and his actual and necessary travelling expenses.

Polling
lists.

(3) It shall not be necessary for the polling lists for use at the taking of a vote to be printed, nor shall it be necessary to prepare more copies than are required to provide one copy of the list for each polling place, one copy for the returning officer and two copies for persons representing those supporting the affirmative and negative respectively. 1946, c. 47, s. 77.

Fees and
expenses.

78. The fees and expenses to be allowed to returning officers and other officers and servants for services performed

under sections 68 to 80, and the expenses incurred in carrying out sections 68 to 80 shall be fixed by the Lieutenant-Governor in Council and shall be taxed and allowed by the chairman of the election board and be paid by the treasurer of the municipality to the persons entitled thereto. 1946, c. 47, s. 78.

79.—(1) The returning officer upon the taking of a vote shall be the clerk of the municipality, or in case of his inability to act, or of a vacancy in the office, some person to be appointed by by-law of the municipal council. Returning officer.

(2) The returning officer shall make his return to the Clerk of the Crown in Chancery showing the number of votes polled for the affirmative and negative on the question or questions submitted, and upon the receipt of such return the Clerk of the Crown in Chancery shall make his return to the Lieutenant-Governor in Council and give notice thereof in *The Ontario Gazette* showing the total number of votes polled in the municipality for the affirmative and negative upon the question or questions. 1946, c. 47, s. 79. Return to Clerk of Crown in Chancery.

80.—(1) Notwithstanding anything in this or any other Act, where the validity of a vote on any question or questions submitted under this Act is questioned, the provisions of Part IV of *The Municipal Act* relating to proceedings to declare a seat vacant, shall apply *mutatis mutandis*, and any notice of motion required under that Part shall be served on such person as the judge or master, as defined in that Part, may direct. 1946, c. 47, s. 80; 1947, c. 58, s. 7. Where validity of vote questioned.
Rev. Stat., c. 243.

(2) Notwithstanding anything in this or any other Act, where a recount of a vote on any question or questions submitted under this Act is requested, sections 141 and 142 of *The Municipal Act* shall apply *mutatis mutandis*. 1947, c. 59, s. 4. Recounts.
Rev. Stat., c. 243.

REGULATIONS

81. The Board, with the approval of the Lieutenant-Governor in Council, may make such regulations with respect to any and all matters and things provided for in this Act as the Board may deem necessary, and without limiting the generality of the foregoing, such powers shall extend to and include,

- (a) prescribing the special accommodation, facilities and equipment that shall be required in or in respect of the various classes of premises for which the various classes of licences may be issued including the

prescribing of different standards of accommodation, facilities and equipment in different classes of establishments;

- (b) providing for different classes of clubs and prescribing the manner in which clubs of the different classes shall be organized and the special accommodation, facilities and equipment that shall be required, and in the case of any class of clubs, prescribing who shall be deemed to be members thereof for the purposes of this Act;
- (c) prescribing the special services that shall be furnished in a dining lounge;
- (d) restricting the classes of licences that may be issued to any class of establishments;
- (e) restricting the scope and effect of licences of the various classes and prescribing terms and conditions governing the sale of liquor and other relevant matters relating to the operation of premises for which licences of the various classes are issued;
- (f) prescribing the fees payable in respect of the issue and transfer of licences including the prescribing of fees in varying amounts for licences issued in respect of various classes of establishments;
- (g) prescribing the fees, schedules or other methods of valuation by which monopoly value and depreciation shall be determined for the purposes of sections 44 and 46;
- (h) governing and regulating premises in respect of which licences may be issued;
- (i) governing the issue, renewal, transfer, refusal, suspension and cancellation of licences;
- (j) governing the location, construction, maintenance, management and operation of licensed premises; 1946, c. 47, s. 81, cls. (a-j).
- (k) governing the issue and cancellation of banquet, entertainment or military mess permits and prescribing the fees payable in respect of the issue of such permits; 1947, c. 59, s. 5, *part.*
- (l) governing the purchase, delivery, keeping for sale, sale, serving and consuming of liquor;

- (m) prescribing the persons to whom the sale of liquor is to be restricted or prohibited; 1946, c. 47, s. 81, cls. (l, m).
- (n) prescribing the periods of the year and the days and hours when liquor may be sold, served and consumed and providing for the alteration thereof by the Board in respect to individual holders of a licence or in any municipality or prescribed area; 1947, c. 59, s. 5, *part*.
- (o) providing for the licensing of employees of persons operating licensed premises and prescribing requirements applicable to such employees;
- (p) prescribing the books and records to be kept, returns to be made and information to be furnished with respect to licensed premises and the examination and audit which shall be made of such books and records;
- (q) prescribing the duties of the registrar, deputy registrars, officials, inspectors and employees of the Board and the books of account and other records to be kept by the Board;
- (r) prescribing the official seal of the Board and the form of applications and notices to be used for the purposes of this Act and the manner of effecting service;
- (s) prescribing the signs that may be erected on or in licensed premises;
- (t) prescribing the hours and days upon which and the manner, methods and means by which liquor shall be delivered to licensed premises;
- (u) prescribing the offences against the laws of Canada and Ontario, conviction of which by any person shall disqualify him from holding a licence;
- (v) governing the manner of incorporation of corporations which may hold licences;
- (w) prescribing the procedure to be followed upon applications to the Board;
- (x) prescribing the form of ballots to be used for voting upon a question submitted in a municipality; and
- (y) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1946, c. 47, s. 81, cls. (o-y).

REPORTS

Reports.

82.—(1) The Board shall from time to time make reports to the Lieutenant-Governor in Council covering such matters in connection with the administration of this Act as he may require, and shall annually make to the Lieutenant-Governor in Council, through the Minister, a report for the twelve months ending on the 31st day of March in the year in which the report is made, which shall contain,

- (a) a statement of the operations of the Board;
- (b) a statement of the number of licences in existence and the names of the owners thereof at such 31st day of March;
- (c) a detailed statement of the number of licences which were issued, renewed, transferred, cancelled or suspended and the names of the owners thereof;
- (d) the details of any compensation awarded;
- (e) a statement of the expenses of the Board;
- (f) general information and remarks as to the working of the Act; and
- (g) any other information requested by the Minister.

Report to
be presented
to legis-
lature.

(2) Every annual report shall be laid before the Legislature as soon as may be. 1946, c. 47, s. 82.

AGREEMENT WITH MUNICIPALITY

Agreement
with muni-
cipality.

83. Subject to the approval of the Lieutenant-Governor in Council, the Board may enter into an agreement with the council of any municipality for the enforcement within the municipality by the council of this Act, *The Liquor Control Act* and the regulations hereunder and thereunder, and may in such agreement provide for the payment to the council of,

Rev. Stat.,
c. 210.

- (a) a portion of the fees for licences issued in respect of establishments in the municipality; and
- (b) the fines or any portion of the fines imposed in any prosecutions instituted by officers designated by the council pursuant to the agreement, for a violation of this Act, *The Liquor Control Act* or the regulations hereunder or thereunder within the municipality. 1946, c. 47, s. 83.

CHAPTER 212

The Live Stock and Live Stock Products Act**1. In this Act,**Interpre-
tation.

- (a) "Commissioner" means Live Stock Commissioner;
- (b) "commission merchant" means any person, partnership, corporation or co-operative association engaged in the business of buying or selling live stock or live stock products for a commission;
- (c) "grade" means the classification of any live stock or live stock product according to the prescribed standards;
- (d) "inspector" means an inspector appointed for the purposes of this Act;
- (e) "live stock" means cattle, swine, sheep and live poultry;
- (f) "live stock products" means meat, raw hides, dressed poultry, eggs and wool;
- (g) "Minister" means Minister of Agriculture;
- (h) "regulations" means regulations made under this Act;
- (i) "shipper" means any person who assembles, ships, transports or offers for sale any live stock or live stock product on his own account or as an agent for any person;
- (j) "stock yard" means any premises used as a market for purchasing and selling live stock designated a stock yard by the regulations. 1950, c. 37, s. 1.

2. The Lieutenant-Governor in Council may authorize one or more persons engaged in the production or marketing of live stock or live stock products to act as an advisory committee with the Minister or his representatives in connection with the production or marketing of any live stock or live stock products. 1950, c. 37, s. 2.

Appoint-
ment of
inspectors.

3. The Lieutenant-Governor in Council may appoint one or more inspectors for the purposes of this Act and may fix their remuneration and allowance for expenses. 1950, c. 37, s. 3.

Power of
inspectors.

4.—(1) Any inspector, for the purpose of enforcing this Act and the regulations, may,

- (a) enter any place, premises or vehicle containing or used for the storage or carriage of any live stock or live stock product;
- (b) stop on a highway any vehicle which he believes to contain any live stock or live stock product and inspect the vehicle and any live stock or live stock product found therein;
- (c) require the production of any books, records or other documents relating to any live stock or live stock product or the furnishing of copies of or extracts from such books, records or other documents;
- (d) take samples of any live stock product in the manner prescribed by the regulations;
- (e) delay the shipment of any live stock or live stock product for the time necessary to complete his inspection thereof;
- (f) refuse to inspect or mark or give any certificate respecting any live stock or live stock product found in any place, premises or vehicle deemed by him to be unsanitary or unsuitable for inspection purposes;
- (g) seize and detain any live stock or live stock product which has been manufactured, packed, branded, labelled, marked, shipped or transported in violation of this Act or the regulations, and subject to any order made by the Minister under section 5, require the owner to remove such live stock or live stock product from the place of detention at the expense of the owner.

Obstruction.

(2) No person shall obstruct any inspector in the performance of his duties or refuse to permit the inspection of any live stock or live stock product or furnish any inspector with false information.

Production
of records.

(3) Every person shall, when required by an inspector, produce any books, records or other documents relating to any live stock or live stock product or copies of or extracts from such books, records or other documents. 1950, c. 37, s. 4.

5.—(1) Any live stock or live stock product seized or detained by an inspector shall be disposed of as the Minister may direct. Disposal of seized live stock, etc.

(2) Any live stock or live stock product seized, detained or disposed of under this Act shall be at the risk and expense of the owner thereof, and the inspector shall immediately notify the owner that such live stock or live stock product has been seized, detained or disposed of, as the case may be. Live stock seized and detained at expense of owner, etc.
1950, c. 37, s. 5.

6.—(1) The Lieutenant-Governor in Council may make regulations,

- (a) establishing and describing standards for the purpose of grading any live stock or live stock product;
- (b) providing for the issue of grading certificates and prescribing the form thereof;
- (c) prescribing the manner in which samples of any live stock product may be taken for inspection;
- (d) providing for and prescribing the manner and conditions of grading, inspection, packing, branding and marking of any live stock or live stock product;
- (e) prescribing the manner in and the conditions under which any live stock or live stock product may be stored, transported, delivered, shipped, advertised, purchased, sold, offered or displayed for sale and the types, sizes, branding, marking and labelling of packages or containers in which any live stock or live stock product may be contained;
- (f) prescribing the manner in which the seller or shipper of ungraded live stock and live stock products shall identify, for purposes of grading, individual producer's lots in any shipment;
- (g) prescribing the manner in which a receiver shall make returns and prepare for presentation to the seller or shipper the statements of account of purchase of any live stock or live stock product and for the investigation of such statements and the transactions represented thereby;
- (h) prescribing the manner in which receipts, classifications, weights and purchase prices shall be recorded at assembling points and abattoirs and made available to the Minister;

- (i) prescribing the grades of eggs which may be broken or dried in any egg-breaking plant;
- (j) prescribing the manner in which stock yards shall be constructed, equipped, maintained and operated;
- (k) prescribing the manner in which complaints against the maintenance and operation of any stock yard shall be made and investigated;
- (l) prescribing the manner in which complaints against any live stock exchange or any member of a live stock exchange shall be made and investigated;
- (m) prescribing the manner in which business shall be conducted by members of a live stock exchange and by persons using a stock yard;
- (n) designating any premises a stock yard for the purposes of this Act;
- (o) classifying persons dealing in live stock or live stock products;
- (p) providing for the licensing by the Commissioner of any class or classes of persons dealing in any live stock or live stock product, prescribing the forms and terms of licences, the fees to be paid therefor and the conditions under which they shall be issued;
- (q) providing for the renewal, suspension and cancellation of such licences and the reinstatement of any suspended or cancelled licence;
- (r) exempting from this Act or the regulations or any part thereof any person or group of persons;
- (s) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Regulation
may be
limited.

(2) Any regulation made under this section may be limited as to time and place. 1950, c. 37, s. 6.

Penalty.

7. Every person who contravenes any of the provisions of this Act or the regulations shall be guilty of an offence and on summary conviction shall be liable to a penalty of not less than \$25 and not more than \$100 for a first offence and to a penalty of not less than \$50 and not more than \$1,000 for any subsequent offence. 1950, c. 37, s. 7.

CHAPTER 213

The Live Stock Branding Act

1. In this Act,

Interpre-
tation.

- (a) "brand" means any letter, sign or numeral, or combination of the same, recorded as allotted;
- (b) "live stock" means any horse, head of cattle, sheep or fowl;
- (c) "Minister" means Minister of Agriculture. R.S.O. 1937, c. 341, s. 1.

2.—(1) No person shall brand live stock except with a brand allotted by the Minister and to which he is entitled under this Act. Branding of live stock.

(2) Every such brand shall be recorded as in this Act provided and the fees payable shall be those set out in the Schedule to this Act. Recording brand.

(3) A brand so allotted shall not be good for a longer period than three years unless it is renewed by the owner. Renewal of brand.

(4) Any owner shall be entitled to transfer the ownership of a brand to any party upon applying to the Minister and complying with the requirements laid down by the Minister to effect the transfer. R.S.O. 1937, c. 341, s. 2. Transfer of brand.

3.—(1) Upon the recording in the books of the Department of Agriculture of any allotment or transfer of a brand, the person in whose name the brand is last recorded shall become the owner of the brand and of all the rights thereof and therein, and shall be entitled to a certificate of the allotment or transfer and of the recorded entry of the same, and the production of the certificate shall be *prima facie* evidence of the ownership of the certificate without any further proof of the signature of the officer or other person signing the certificate. Certificate of transfer.

(2) In case any owner under this Act forfeits his right to ownership of a brand, the brand shall not be allotted to any person for a period of at least three years. R.S.O. 1937, c. 341, s. 3. Right to ownership.

Record of
all brands.

4. The Live Stock Commissioner of the Department of Agriculture shall be recorder of brands and shall receive applications, keep a record of all brands allotted and make transfers and cancellations in accordance with this Act. R.S.O. 1937, c. 341, s. 4; 1947, c. 60, s. 1.

List of
brands
may be
published.

5. The Minister may cause to be published from time to time a complete list of the brands recorded under this Act. R.S.O. 1937, c. 341, s. 5.

Forms and
regulations.

6. The Minister may prescribe any forms or make any further regulations necessary for the better carrying out of the provisions of this Act. R.S.O. 1937, c. 341, s. 6.

Offences.

7. Every person who,

- (a) improperly and wrongfully brands or causes to be branded any live stock with a brand which has been recorded as required by this Act or the regulations, and which has not been cancelled thereunder; or
- (b) brands or causes to be branded with his own brand any live stock of which he is not the owner without the authority of the owner; or
- (c) defaces, obliterates or otherwise renders illegible, or causes to be defaced, obliterated or otherwise rendered illegible any brand upon live stock; or
- (d) brand or causes to be branded any live stock with an unrecorded brand,

Penalty.

shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$200. R.S.O. 1937, c. 341, s. 7.

SCHEDULE

TARIFF OF FEES

On application for allotment of a brand for a period of 3 years.....	\$1.00
On application for renewal of an allotment of a brand for a further period of 3 years.....	1.00
On application for change in the record of a brand.....	.50
On every transfer of a recorded brand.....	.50
For every search of a brand record.....	.50
For every certified extract from the brand recorded.....	.50

R.S.O. 1937, c. 341, Sched.

CHAPTER 214

The Loan and Trust Corporations Act**1. In this Act,**Interpre-
tation.

- (a) "accountant" means a member of the Institute of Chartered Accountants of Ontario or of the Certified Public Accountants Association of Ontario or such other person as may be approved by the Registrar as being a qualified accountant for the purpose of auditing the books and accounts of corporations under this Act;
- (b) "chief agency" means the principal office or place of business in Ontario of a corporation that has its head office out of Ontario;
- (c) "corporation" means a loan corporation, a loaning land corporation or a trust company;
- (d) "due application" includes the furnishing of information, evidence and material required by the Registrar, and the payment of the prescribed fees in respect of any application, certificate or document required or issued under this Act; and also the payment to the Treasurer of Ontario of all taxes due and payable by the applicant company under any Act of Ontario;
- (e) "extra provincial corporation" means a corporation other than one incorporated under the law of Ontario;
- (f) "head office" means the place where the chief executive officers of the corporation transact its business;
- (g) "law of Ontario" includes any laws of the former Province of Canada or of Upper Canada, continued as the law of Ontario, or consolidated or incorporated with the law of Ontario; 1949, c. 52, s. 1, cls. (a-g).
- (h) "loan corporation" means every incorporated company, association or society, constituted, authorized or operated for the purpose of lending money on the security of real estate, or for that and any other purpose, but does not include a chartered bank, an insurance corporation, a loaning land corporation, a

Rev. Stat.,
c. 187.

trust company, or an investment company registered under *The Investment Contracts Act*; 1949, c. 52, s. 1, cl. (h); 1950, c. 38, s. 1.

- (i) "loaning land corporation" means a corporation incorporated for the purpose of lending money on the security of real estate and of carrying on the business of buying and selling land;
- (j) "Minister" means the member of the Executive Council under whose direction this Act is administered;
- (k) "paid in" as applied to the capital stock of a corporation or to any shares thereof means the amount paid to the corporation on its shares, not including the premium if any paid on such shares, whether such shares are or are not fully paid up;
- (l) "paid up", when applied to any share, means a share on which there remains no liability, actual or contingent, to the issuing corporation;
- (m) "permanent stock" or "permanent shares" includes all stock or all shares of permanent or fixed capital not liable to be withdrawn from or repaid by the corporation;
- (n) "provincial corporation" means a corporation incorporated under the law of Ontario;
- (o) "real estate" includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal or incorporeal, and leasehold estates, and any undivided share thereof, and any estate, right or interest therein;
- (p) "registered corporation" means a corporation registered under this Act;
- (q) "Registrar" means Registrar appointed under this Act;
- (r) "trust company" means a company constituted or operated for the purpose of acting as trustee, bailee, agent, executor, administrator, receiver, liquidator, assignee, guardian of a minor's estate, or committee of a mentally incompetent person's estate. 1949, c. 52, s. 1, cls. (i-r).

Application
of Act.

2.—(1) This Act shall apply, according to its context, to every corporation within the meaning of this Act.

(2) With respect to every provincial corporation whether ^{Idem.} formed or incorporated before or after the passing of this Act and whether formed or incorporated by or under a special or general Act or by letters patent or otherwise, any provision of the Act or letters patent or other instrument of incorporation that is inconsistent or in conflict with the provisions of this Act shall not apply.

(3) Sections 3 to 58, except sections 29 and 45, shall apply ^{Idem.} only to provincial corporations. 1949, c. 52, s. 2.

INCORPORATION OF LOAN CORPORATIONS, LOANING LAND CORPORATIONS AND TRUST COMPANIES

3.—(1) An application for the incorporation of a loan ^{Application for incorporation.} corporation, a loaning land corporation or a trust company shall be made by petition to the Lieutenant-Governor in Council through the Minister in the prescribed form, and shall be delivered to the Registrar.

(2) The applicants shall for one month next before filing ^{Notice of application.} their application with the Registrar publish a notice thereof in *The Ontario Gazette*, and shall also before such filing give the like notice at least once in a newspaper published in the locality in which the head office is to be established.

(3) The notice shall state the proposed corporate name, ^{Contents.} the location of the head office, which shall be in Ontario, the purposes of the corporation, and for what amount of permanent capital stock authorization will be asked, with the number of shares and the par value of the shares.

(4) The applicants shall furnish such further information ^{Further information.} as may be required by the Minister or the Registrar.

(5) The application shall be accompanied by the original, ^{Application to be accompanied by a declaration.} or one of the duplicate originals, of a declaration adopted at a general meeting of the promoters, and executed under their respective hands and seals by at least 25 persons present at the meeting who are subscribers for shares.

(6) The declaration shall set out the names in full and the ^{Contents of declaration.} address and calling of each of the declarants and shall declare: that the declarants assembled at.....on.....
(naming the place and time);being chairman, and
.....being secretary of the meeting (naming them) did there and then agree to constitute themselves a provisional corporation by the name of (mentioning the proposed corporate name) under *The Loan and Trust Corporations Act* and under the proposed by-laws there and then adopted, and annexed

to the declaration; also that the following persons, five in number (*naming them*), were elected provisional directors.

Reference to Registrar.

(7) The Minister may refer the application or any question arising thereunder to the Registrar for a report, and the Registrar shall report thereon. 1949, c. 52, s. 3.

By-laws to accompany declaration.

4.—(1) Three copies of the proposed by-laws shall accompany the declaration, one copy duly certified being annexed thereto.

What they shall provide for.

(2) Subject to this Act, the by-laws shall,

- (a) provide for the proposed corporate name, and the location of the head office of the corporation;
- (b) set out the purposes for which the corporation is to be constituted;
- (c) declare that the capital stock of the corporation consists exclusively of permanent capital stock divided into a stated number of shares each of a stated uniform amount, and declare what respective amounts of such capital stock are before the commencement of business to be authorized, subscribed, and paid in, with the proviso that no shares shall be issued at a discount, or upon any terms, agreement or understanding that the taker or holder shall be liable for any less amount than the par value of the shares, less the calls paid thereon;
- (d) in the case of a loan or a loaning land corporation, define and regulate the exercise of such general powers of borrowing as are by this Act conferred upon loan corporations and loaning land corporations, and declare within what limits such borrowing powers are to be exercised, and whether by issuing debentures or otherwise;
- (e) provide for the holding of general meetings, ordinary and special, of the shareholders;
- (f) provide for the election of directors, prescribe their number, powers, duties, and term of office, and the number necessary to constitute a quorum;
- (g) provide that security in amounts satisfactory to the board of directors shall be taken for the fidelity of the person or persons having custody or control of the funds of the corporation;

(h) provide for the proper audit, at least yearly, of the books and accounts of the corporation by two or more accountants, who shall not be otherwise employed by the corporation or be otherwise officers thereof;

(i) require that there shall be mailed or delivered to each shareholder, at least 10 days before the annual meeting, a statement, verified by the auditors, of the assets and liabilities and income and expenditure of the corporation to a date not more than two months before the meeting, the statement to be drawn in accordance with the form from time to time prescribed by the Registrar;

(j) provide for their amendment by the shareholders in general meeting; and

(k) provide that no transfer of shares of the corporation may be made that has the effect of reducing the number of shareholders to less than 25. 1949, c. 52, s. 4.

5. A sworn copy of the stock subscription shall also be filed with the Registrar containing such particulars as he may require. 1949, c. 52, s. 5. Stock subscription.

6. If on receiving an application for incorporation the Minister finds in the by-laws anything repugnant to this Act or to the law of Ontario, he may direct an amendment of the by-laws, and, upon their being amended as directed and returned certified as having been so amended, the application may be proceeded with. 1949, c. 52, s. 6. Minister. may direct amendment of by-laws.

7. The by-laws accompanying the declaration mentioned in section 3 with such amendments as may have been required by the Minister, shall be the first by-laws of the corporation and shall take effect on the date of the incorporation. 1949, c. 52, s. 7. First by-laws of corporation.

8.—(1) For the purpose of incorporation the applicants shall file with the Registrar an affidavit showing that at least \$300,000 of stock has been subscribed for and taken up *bona fide* by at least 25 responsible subscribers, each of the applicants holding in his own name and for his own use shares of an aggregate par value of at least \$1,000 and has paid in cash all calls due thereon and all liabilities incurred by him to the corporation, and that in the case of trust companies at least \$100,000 and in other cases at least \$50,000 of such subscribed Affidavit as to subscription and payment.

stock has been paid in cash by the subscribers into a branch in Ontario of a chartered bank, in trust for the proposed corporation, free from all liability on the part of the proposed corporation or any of the subscribers to make repayment of the same or any part thereof to any person, firm, or corporation, and that each subscriber has out of his own money, contributed to the amount so paid in rateably according to the amount of shares subscribed for by him.

New corporation acquiring assets of existing corporation.

(2) Where the corporation is to be constituted for the purpose of acquiring the assets of one or more existing corporations and the proposed consideration for the transfer of the assets is to consist wholly or in part of shares of the capital stock of the new corporation, the Lieutenant-Governor in Council may dispense with the requirements of subsection 1 as to subscription and payment to such extent as he may deem proper. 1949, c. 52, s. 8.

All stock to be permanent.

9.—(1) All stock and shares in any corporation incorporated after the 17th day of March, 1900, shall be fixed, permanent and non-withdrawable.

Unless issued prior to 17th March, 1900.

(2) Any corporation that did not issue terminating stock or shares on or before the 17th day of March, 1900, shall not make or issue such stock or shares.

Saving as to law applicable to terminating shares.

(3) Notwithstanding the repeal of certain Acts and parts of Acts by section 143 of *The Loan and Trust Corporations Act*, being chapter 34 of the Statutes of Ontario, 1912, the law of Ontario which, on the 16th day of April, 1912, was in force and applied to corporations having terminating or withdrawable stock or shares, shall continue in force and shall apply to such corporations so long as such stock or shares subsist. 1949, c. 52, s. 9.

Letters patent.

10.—(1) A grant of incorporation shall be by letters patent.

Contents.

(2) The letters patent shall set forth the name under which, and the date at which, the corporation became incorporated, the location of the head office, the amount of stock authorized, and the business to be undertaken by the corporation, distinguishing between the classes of business mentioned in section 107. 1949, c. 52, s. 10.

Term.

11. Incorporation may be granted without limitation of time, or for any limited term of years not less than 10. 1949, c. 52, s. 11.

12.—(1) Where incorporation is granted for a limited term of years, the letters patent shall specify the first and the last day of the term. Term to be specified if limited.

(2) Where incorporation has been granted for a limited term, application may, upon the like notice as is required by section 3, be made on or before the expiry of the term for the renewal or extension of the incorporation, and the incorporation may be renewed or extended by letters patent either without limitation of time or for a limited term. 1949, c. 52, s. 12. Renewal of terminating charter.

13.—(1) If a corporation does not go into actual *bona fide* operation within two years after incorporation, or at any time for two consecutive years does not use its corporate powers for the purposes set forth in the Act or instrument of incorporation, such non-user shall *ipso facto* work a forfeiture of the corporate powers except so far as may be necessary for winding up the corporation. Forfeiture of charter for non-user.

(2) In any action or proceeding where such non-user is alleged, proof of user shall lie upon the corporation. Onus of proof of user.

(3) No such forfeiture shall affect prejudicially the rights of creditors as they exist at the date of the forfeiture. Rights of creditors not affected.

(4) The Lieutenant-Governor in Council may upon application revive any charter so forfeited, upon compliance with such conditions and upon payment of such fees as the Lieutenant-Governor in Council may designate. 1949, c. 52, s. 13. Charter may be revived.

14.—(1) The directors of any loaning land corporation may pass a by-law to delete from its letters patent the power to lend money on the security of real estate and the power to receive deposits. Loaning land corporations, power to withdraw from Act.

(2) No such by-law shall have any effect until it has been ratified by a vote of shareholders present or represented by proxy at a general meeting of the corporation duly called for considering the by-law and holding not less than two-thirds of the issued capital stock of the corporation represented at the meeting, and until it has been confirmed by the Lieutenant-Governor in Council. Ratification and confirmation.

(3) At any time not more than six months after the ratification of the by-law, the directors may petition the Lieutenant-Governor in Council for confirmation of the by-law. Petition for confirmation.

Conditions precedent to confirmation.

(4) The Lieutenant-Governor in Council may grant such confirmation if he is satisfied of the *bona fide* character of the changes provided for in the by-law and that the confirmation of the by-law is in the public interest.

Evidence of confirmation.

(5) The confirmation by the Lieutenant-Governor in Council may be evidenced by a certificate of the Minister or by a certified copy of the Minister's certificate, and such certificate or certified copy thereof shall be conclusive evidence of all matters therein certified and of the due performance of all matters precedent to the granting thereof.

Effect of confirmation.

(6) Upon the confirmation of the by-law, the corporation shall cease to be a corporation within the meaning of this Act and the Registrar shall forthwith transfer all papers in his department connected with the corporation to the Provincial Secretary. 1950, c. 38, s. 2, *part*.

Consent of holders to redemption.

15. Unless preference shares, debentures or bonds are issued subject to redemption or conversion the same shall not be subject to redemption or conversion without the consent of the holders thereof. 1949, c. 52, s. 14.

First directors of the corporation.

16. Where incorporation is granted, the provisional directors named in the declaration of the applicants shall be the first directors of the corporation, and shall continue in office until their successors are duly elected. 1949, c. 52, s. 15.

When letters patent of trust company may issue.

17.—(1) Letters patent of incorporation of a trust company may issue where it is shown to the satisfaction of the Lieutenant-Governor in Council that, in the locality in which the head office of the proposed company is to be situate, there exists a public necessity for a trust company or for an additional trust company.

Satisfying Lieutenant-Governor of fitness of applicants.

(2) Such letters patent shall not issue unless the Lieutenant-Governor in Council is satisfied that the fitness of the applicants to discharge the duties of a trust company is such as to command the confidence of the public, and that the public convenience and advantage will be promoted by granting to the company the powers applied for. 1949, c. 52, s. 16.

Transfer of papers.

18. After the issue of letters patent to any corporation required or authorized to register under this Act, the Provincial Secretary shall transfer all papers in his Department connected with the corporation to the office of the Registrar. 1949, c. 52, s. 17.

STATUTORY MEETINGS

19.—(1) Every corporation shall, within a period of not less than one month and not more than three months from the date at which the corporation is entitled to commence business, hold a general meeting of its shareholders which shall be called the statutory meeting. Statutory meetings.

(2) The directors shall, at least 10 days before the day on which the meeting is to be held, forward to every shareholder of the corporation a report certified by not less than two directors of the corporation showing, Report to be sent to shareholders.

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the corporation in respect of such shares, distinguished as aforesaid;

(c) an abstract of the receipts and payments of the corporation on capital account to the date of the report, and an account or estimate of the preliminary expenses of the corporation;

(d) the names, addresses and descriptions of the directors, auditors, if any, manager, if any, and secretary of the corporation; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3) The report, so far as it relates to the shares allotted by the corporation, and to the cash received in respect of such shares, and to the receipts and payments of the corporation on capital account, shall be certified as correct by the auditors, if any, of the corporation. Report to be certified by auditors.

(4) The directors shall cause a copy of the certified report to be filed with the Registrar forthwith after sending it to the shareholders. Report to be filed with Registrar.

(5) The directors shall cause a list showing the names and addresses of the shareholders, and the number of shares held by each of them, to be produced at the commencement of the meeting, and to remain open and accessible to any shareholder of the corporation during the continuance of the meeting. List of shareholders to be produced at meeting.

Shareholders may discuss business of company at meeting.

(6) The shareholders present at the meeting shall be at liberty to discuss any matter relating to the formation of the corporation, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been duly given may be passed.

Adjournments.

(7) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been duly given, either before or subsequently to the former meeting, may be passed, and an adjourned meeting shall have the same powers as the original meeting.

Application to court if default made.

(8) If default is made in filing the report or in holding the statutory meeting, then at the expiration of 14 days after the last day on which the meeting ought to have been held any shareholder may petition the court for the winding up of the corporation, and the court may either direct that the corporation be wound up or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by the persons who, in the opinion of the court, are responsible for the default. 1949, c. 52, s. 18.

GENERAL MEETINGS OF SHAREHOLDERS

Annual meeting.

20.—(1) A general meeting of the shareholders shall be held at least once in each year for the purpose of considering the financial statement of the corporation, and the election of directors and auditors, and the transaction of such other business as is proper at such general meeting under the law of Ontario and the by-laws of the corporation.

Notice of annual meeting.

(2) Notice of the time and place of the holding of the annual general meeting of the shareholders shall be delivered, or shall be sent by post to the address of each shareholder so far as the same is known, or, on request, to his proxy residing in North America or the United Kingdom, and the notice of the meeting shall be so delivered or sent at least 10 days before the time fixed for holding the meeting, and a copy of the annual statement of the directors to a date not more than four months before the date of the meeting shall accompany the notice. 1949, c. 52, s. 19.

Special general meetings.

21.—(1) The directors shall have the right at any time by resolution of the board passed in that behalf to call a special general meeting of the shareholders for the transaction of any business specified in the resolution.

On requisition of shareholders.

(2) One-fourth part in value of the shareholders of the corporation shall, by requisition delivered to the manager, acting manager, or secretary thereof, have at all times the

right to have a special general meeting called by such officer for the transaction of any business specified in the requisition.

(3) Notice of the holding of a special general meeting of the shareholders, specifying the time and place of the meeting and the business to be transacted thereat, shall be delivered, or shall be sent by registered post, to the address of each shareholder, so far as the same is known, at least 10 days before the day appointed for the meeting. ^{Notice.}

(4) No other business shall be transacted at any special general meeting unless all the shareholders are present in person or by proxy and unanimously consent thereto. ^{Other business.}

(5) Before the business of any special general meeting is proceeded with there shall be produced and read a statutory declaration of the manager, acting manager or secretary of the corporation that the requirements of this section as to notice have been fully complied with. ^{Proof of notice.}

(6) A copy of the notice so delivered or sent, and of the declaration in relation thereto, shall be entered in the minute book of the corporation as part of the proceedings of the meeting. 1949, c. 52, s. 20. ^{Minutes.}

22. Any director or officer wilfully neglecting or omitting to give effect to the requisition mentioned in section 21, or to give the notice of any general meeting required by section 20 or 21, shall be guilty of an offence. 1949, c. 52, s. 21. ^{Penalty.}

23. At all meetings of shareholders of the corporation a shareholder shall have one vote for each share held by him upon which he is not six months in arrear. 1949, c. 52, s. 22. ^{Voting power of shareholders.}

24. A shareholder may either vote in person or be represented and vote by a proxy who is a shareholder of the corporation and not six months in arrear. 1949, c. 52, s. 23. ^{Proxies.}

25. The transactions of all annual and special general meetings of the corporation and of all meetings of the board of directors shall be entered in a book to be known as the minute book of the corporation. 1949, c. 52, s. 24. ^{Minute book.}

BY-LAWS

26. A meeting of the shareholders, called with due notice thereof, may make such lawful and proper by-laws for the government of the corporation, not repugnant to this Act or any other law in force in Ontario, as the majority of the share- ^{Shareholders may make by-laws.}

holders present in person or by proxy deem proper. 1949, c. 52, s. 25.

To be sealed.

27. Every by-law shall be reduced to writing and shall have affixed thereto the seal of the corporation, and shall be receivable in evidence without proof of the seal or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof. 1949, c. 52, s. 26.

By-laws to be recorded.

28.—(1) The by-laws shall be forthwith recorded in a book to be kept by the corporation for that purpose and to be known as the "By-law Book".

Right to inspect By-law Book.

(2) Such book shall, without the payment of any fee or charge, be open during business hours for inspection by any shareholder, depositor, debenture holder or holder of a guaranteed investment certificate, by himself or his agent, and any such person may make extracts therefrom. 1949, c. 52, s. 27.

Copy of by-laws, etc., to be filed with Registrar.

29. Every corporation shall deliver to the Registrar within one month after the passing thereof a certified copy of its by-laws and of every repeal, or addition to, or amendment or consolidation thereof. 1949, c. 52, s. 28.

Delegating to directors power to make or amend by-laws.

30.—(1) The shareholders in meeting may by by-law, of which, as proposed, notice shall be given to each shareholder with the notice of the meeting, empower the directors to make, amend and repeal by-laws for the corporation.

Confirmation necessary.

(2) Every such by-law of the directors and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the corporation duly called for that purpose, shall have force only until the next annual meeting of the corporation, and in default of confirmation thereat shall, at and from that time, cease to have force, and in that case no new by-law to the same or the like effect or re-enactment thereof shall have any force until confirmed at a general meeting.

By-laws may be varied.

(3) The corporation may at a general meeting duly called for the purpose or at an annual meeting repeal, amend, vary or otherwise deal with any by-law passed by the directors; but no act done or right acquired under any by-law shall be prejudicially affected by any such repeal, amendment, variation, or other dealing. 1949, c. 52, s. 29.

Alteration at general meeting.

31. At a general meeting the shareholders may alter or amend such by-laws, and may confirm the same as so altered and amended. 1949, c. 52, s. 30.

32. The directors of a corporation, authorized as provided by section 30, may make by-laws, not repugnant to this Act or any other law in force in Ontario, to regulate, By-laws for particular purposes.

- (a) the allotment and issue of shares, the making of calls thereon, the payment thereof, the issue and registration of certificates of shares, the forfeiture of shares for non-payment, the disposal of forfeited shares and of the proceeds thereof, the transfer of shares, and subject to section 58 the subdivision of existing shares into shares of smaller amount;
- (b) the declaration and payment of dividends;
- (c) subject to section 66, the appointment, functions, duties and removal of agents, officers and servants of the corporation, and their remuneration;
- (d) the calling of meetings of the directors and the procedure at such meetings; and
- (e) the conduct in all other particulars of the affairs of the corporation. 1949, c. 52, s. 31.

DIRECTORS

33.—(1) The term of office of the directors of a corporation shall not exceed two years. Term of office.

(2) Where the term of office is one year only, the number of directors shall not be less than five. Number.

(3) Where the term of office is two years, the number of directors shall be an even number not less than six, and one-half of the directors shall retire annually at the general meeting in rotation, but shall, if otherwise qualified, be eligible for re-election. Idem.

(4) Where the term of office is two years, the first elected directors shall at their first meeting determine by lot which of them shall retire at the end of the first year. 1949, c. 52, s. 32. Retirement by lot.

34.—(1) The election of directors shall be by ballot. Ballot.

(2) No person shall be qualified to be a director unless he is of the full age of 21 years and is a shareholder holding, in his own right, shares of the corporation, on which at least \$1,000 has been paid in, and is not in arrear in respect of any call thereon. Qualification of directors.

Majority to be residents and British subjects.

(3) The majority of the directors shall at all times be resident in Canada and subjects of His Majesty by birth or naturalization.

New election to fill directorships in such case.

(4) Where more than the prescribed number of non-residents and aliens are elected, a new election shall be held forthwith to fill all the directorships to which aliens or non-residents have been elected, and so on until the number of non-residents or aliens is reduced to the prescribed number.

Remuneration.

(5) The remuneration of directors shall be fixed by the shareholders in general meeting. 1949, c. 52, s. 33.

Provision in case of failure of election.

35. If at any time an election of directors is not held, or does not take effect at the proper time, the corporation shall not be thereby dissolved, but the election may take place at any general meeting of the corporation duly called for that purpose, and the retiring directors shall continue in office until their successors are elected. 1949, c. 52, s. 34.

Interim vacancies.

36. Vacancies occurring in the board of directors may be filled for the unexpired remainder of the term by the board from among the qualified shareholders of the corporation. 1949, c. 52, s. 35.

Powers of directors.

37. The directors may lawfully exercise all the powers of the corporation except as to such matters as are directed by law or by the by-laws of the corporation to be transacted at a general meeting and have not been delegated to the directors by a general meeting as provided by section 30. 1949, c. 52, s. 36.

President and vice-president.

38.—(1) The directors shall from time to time elect from among themselves a president and one or more vice-presidents, and the directors shall in all things delegated to them act for and in the name of the corporation, and, subject to subsection 2, the concurrence of a majority of the directors present at any meeting shall at all times be necessary to any act of the board.

Casting vote.

(2) On any question before the board each director shall have one vote, and in the event of an equality of votes the president or presiding officer shall have a second or casting vote. 1949, c. 52, s. 37.

Executive committee.

39.—(1) The shareholders of a corporation having more than six directors may, at a general meeting called for the purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors, to

delegate any of their powers to an executive committee consisting of not less than three to be elected by the directors from their number.

(2) A committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed upon them by such resolution or by the directors. Committee's powers.

(3) Where directors delegate any of their powers to an executive committee, the powers so delegated shall be stated in writing and entered in the minute book of the corporation. Delegated powers to be recorded in minute book.
1949, c. 52, s. 38.

40. Subject to this Act and to the Act or instrument constituting the corporation and to the by-laws of the corporation, the directors may, General powers of directors.

(a) use or cause to be used and affix the seal of the corporation, and may affix or cause it to be affixed to any document or paper which in their judgment may require the same;

(b) make and enforce calls upon the shares of the respective shareholders;

(c) declare the forfeiture of all shares on which such calls are not paid;

(d) make any payments and advances of money they may deem expedient that are authorized to be made by or on behalf of the corporation, and enter into all contracts for the execution of the purposes of the corporation, and for all other matters necessary to the transaction of its affairs;

(e) generally deal with, sell, exchange, lease and dispose of the lands, property and effects of the corporation in such manner as they deem expedient and conducive to the benefit of the corporation;

(f) do and authorize, assent to or adopt all acts required for the due exercise of any further powers and authorities conferred by the Legislature. 1949, c. 52, s. 39.

41.—(1) Where the directors entertain reasonable doubts as to the legality of any claim to or upon any share, bond, debenture, or obligation of a corporation, or to or upon any dividend, coupon or the proceeds thereof, they may apply to the Supreme Court, stating such doubt, for an order or judgment adjudicating upon such claim, and awarding such share, Where directors have reasonable doubts as to legality of claim.

bond, debenture, obligation, dividend, coupon or proceeds to the person legally entitled to the same, and the court may restrain any action or proceeding against the corporation, or the directors or officers thereof, for the same subject-matter, pending the determination of the application.

Order of court to be indemnity to company.

(2) If the order or judgment of the court is obeyed, the corporation and the directors and officers shall be fully protected and indemnified against all actions, claims and demands in respect of the matters in question in such application and the proceedings thereupon. 1949, c. 52, s. 40.

"Manager" and "Managing Director".

42. The secretary or treasurer or secretary-treasurer or other officer of the corporation may be styled "Manager", and when the officer is also a director he may be styled "Managing Director". 1949, c. 52, s. 41.

Certain persons in service of corporation to furnish security.

43. Every officer or other person appointed to any office in anywise concerning the receipt, safe-keeping or proper application of money shall furnish security according to the by-laws of the corporation and to the satisfaction of the directors for the just and faithful execution of the duties of his office, and any person entrusted with the performance of any other service may be required by the directors to furnish similar security. 1949, c. 52, s. 42.

Liability of directors declaring a dividend when corporation is insolvent, etc.

44. The directors shall not declare or pay any dividend or bonus when the corporation is insolvent, or that renders the corporation insolvent or diminishes its capital; and if any director, present when any such dividend or bonus is declared, forthwith, or if any director then absent, within 24 hours after he becomes aware thereof, and is able to do so, enters his written protest against the same, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability. 1949, c. 52, s. 43.

Liability of directors for wages.

45.—(1) The directors of any corporation shall be jointly and severally liable to its labourers, servants and apprentices for all debts not exceeding one year's wages due for services performed for the corporation while they are such directors.

Where no liability.

(2) A director shall not be liable under subsection 1 unless,

- (a) the corporation has been sued for the debt within one year after it has become due and execution has been returned unsatisfied in whole or in part; or
- (b) the corporation has, within that period, gone into liquidation or has been ordered to be wound up and the claim for such debt has been duly filed and proved,

and unless he is sued for such debt while a director or within one year after he has ceased to be a director.

(3) If execution has so issued the amount recoverable against the director shall be the amount remaining unsatisfied on the execution. Liability for amount unsatisfied on execution.

(4) If the claim for such debt has been proved in liquidation or winding-up proceedings a director, upon payment of the debt, shall be entitled to any preference which the creditor paid would have been entitled to, and where a judgment has been recovered he shall be entitled to an assignment of the judgment. 1949, c. 52, s. 44. On payment director entitled to assignment of judgment, etc.

SHARES; CALLS ON CAPITAL STOCK

46.—(1) The directors may call in and demand from the shareholders the amount unpaid on shares by them subscribed or held at such times and places and in such payments or instalments as the special Act, letters patent, supplementary letters patent, or this Act, or the by-laws of the corporation require or allow, and interest shall accrue upon the amount of any unpaid call from the day appointed for payment thereof. Calling in instalments.

(2) The demand shall state that in the event of non-payment the shares in respect of which the call was made will be liable to be forfeited. Demand to state liability to forfeiture.

(3) If after the demand any call is not paid in accordance therewith, the directors, by resolution duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made, and the same shall thereupon become the property of the corporation and may be disposed of as, by by-law or otherwise, the corporation may determine; but such forfeiture shall not relieve the shareholder of any liability to the corporation or to any creditor. 1949, c. 52, s. 45. Forfeiture of shares.

47. Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, but shall not be liable to an action therefor by any creditor before an execution against the corporation has been returned unsatisfied in whole or in part, and the amount due on the execution, but not beyond the amount so unpaid on such shares, shall be the amount recoverable, with costs, against the shareholder. 1949, c. 52, s. 46. Liability of shareholders.

48. In any action under section 47 a shareholder may plead by way of defence, in whole or in part, any set-off that he could set up against the corporation, except a claim for Set-off.

unpaid dividend, or a salary or allowance as a president or a director of the corporation. 1949, c. 52, s. 47.

Par value
of shares.

49. The par value of a share of capital stock shall be any multiple of \$5 but shall not be less than \$10 and not more than \$100. 1949, c. 52, s. 48.

Representa-
tives,
guardians,
or trustees
not to be
personally
liable.

50.—(1) No person holding shares in the corporation as executor, administrator, guardian, committee of a mentally incompetent person, or trustee of or for any estate, trust or person named in the books of the corporation as being so represented by him, shall be personally subject to any liability as a shareholder, but the estate and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust fund would be if living and competent to hold the shares in his own name.

Liability of
beneficiary.

(2) If the trust is for a living person, not under disability, such person also shall be liable as a shareholder.

Where
beneficiary,
etc., not
named,
trustee, etc.,
liable.

(3) If such testator, intestate, ward, mentally incompetent person or person so represented is not named in the books of the corporation, the executor, administrator, guardian, committee or trustee shall be personally liable in respect of such shares as if he held them in his own name as owner thereof. 1949, c. 52, s. 49.

Payments
on shares in
advance of
calls.

51.—(1) Except with the consent of the directors, no payment on account of capital stock shall be made in advance of calls thereon.

Right to
participate
in dividends.

(2) In respect of any sum so paid a shareholder shall be entitled to participate in any dividend declared, but it shall not bear interest and shall not constitute a loan to or a debt of the corporation.

To be
credited as
against sub-
sequent calls.

(3) The shareholder shall be entitled to have any such advance payment credited to him *pro tanto* as against subsequent calls. 1949, c. 52, s. 50.

Restrictions
on transfer.

52. Subject to section 53, no by-law shall be passed which in any way restricts the right of a holder of paid up shares to transfer the same, but nothing in this section shall prevent the regulation of the mode of transfer thereof. 1949, c. 52, s. 51.

When
directors'
consent
required.

53.—(1) No transfer of shares, the whole amount whereof has not been paid, shall be made without the consent of the directors.

(2) Where any such transfer is made with the consent of the directors to a person who is not apparently of sufficient means to fully pay up such shares, the directors shall, subject to subsection 3, be jointly and severally liable to the creditors of the corporation in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been. Directors' liability.

(3) If any director present when any such transfer is allowed, forthwith, or if any director then absent, within 24 hours after he becomes aware of such transfer, and is able to do so, enters his written protest against the same, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability. Relief from liability by entering protest.

(4) Where a share upon which a call is unpaid is transferred with the consent of the directors, the transferee shall be liable for the call to the same extent and with the same liability to forfeiture of the share if the call remains unpaid, as if he had been the holder when the call was made, and the transferor shall remain liable also for the call until it has been paid. Liability where call remains unpaid.

(5) Where the letters patent, supplementary letters patent or by-laws of a corporation confer the power on the directors, they may decline to register a transfer of shares belonging to a shareholder who is indebted to the corporation. 1949, c. 52, s. 52. Where transferor indebted.

54. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding 25 cents, and on such terms, if any, as to evidence and indemnity as the directors think fit. 1949, c. 52, s. 53. Lost certificate.

55. No transfer of shares, unless made by sale under execution or under the order or judgment of a competent court, shall, until entry thereof has been duly made, be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and, if absolute, as rendering the transferee and the transferor jointly and severally liable to the corporation and its creditors until entry thereof has been duly made in the books of the corporation. 1949, c. 52, s. 54. Transfer valid only after entry.

56.—(1) The directors may, for the purpose of notifying the person registered therein as owner of such shares, refuse to allow the entry in any such books of a transfer of shares, and in that event shall forthwith give notice to the owner of the application for the entry of the transfer. Transferor may be notified.

Owner may lodge caveat.

(2) The owner may lodge a caveat against the entry of the transfer and thereupon the transfer shall not be made for a period of 48 hours.

Transfer may be entered if no order served.

(3) If no order of a competent court enjoining the entry of the transfer is served upon the corporation within one week from the giving of the notice or the expiration of the period of 48 hours, whichever last expires, the transfer may be entered.

Corporation not to be liable if section complied with.

(4) Where a transfer is entered after the proceedings mentioned in this section, the corporation shall, in respect of the shares so transferred, be free from liability to a person whose rights are purported to be transferred, but without prejudice to any claim which the transferor may have against the transferee. 1949, c. 52, s. 55.

Deposit of foreign probate, letters of administration, etc., with officer of corporation.

57.—(1) Subject to *The Succession Duty Act*, where,

(a) a transmission of shares or other securities of a corporation takes place by virtue of any testamentary act or instrument, or in consequence of an intestacy; and

(b) the probate of the will or letters of administration or document testamentary, or other judicial or official instrument under which the title, whether beneficial or as trustee, or the administration or control of the personal estate of the deceased is claimed to vest, purports to be granted by any court or authority in Canada, or in the Commonwealth, or in any foreign country,

Rev. Stat., c. 378.

the probate of the will or the letters of administration or the document testamentary or, in the case of a transmission by notarial will in the Province of Quebec, a copy thereof duly certified in accordance with the laws of Quebec, or the other judicial or official instrument, or an authenticated copy thereof or official extract therefrom under the seal of the court or other authority, without any proof of the authenticity of the seal or other proof whatever, shall be produced, and a true copy thereof, together with a declaration in writing showing the nature of the transmission, signed and executed by such one or more of the persons claiming by virtue thereof as the corporation may require, or, if any such person is a company, signed and executed by an officer thereof, shall be deposited with an officer of the corporation or other person authorized by the directors of the corporation to receive them.

(2) Such production and deposit shall be sufficient justification and authority to the directors for paying the amount or value of any dividend, coupon, bond, debenture, deposit, guaranteed investment certificate, obligation or share, or transferring, or consenting to the transfer of any bond, debenture, deposit, guaranteed investment certificate, obligation or share, in pursuance of, and in conformity to such probate, letters of administration or other such document aforesaid, but the payment, transfer or consent to transfer, shall not be made unless and until the provisions of *The Succession Duty Act* are complied with. 1949, c. 52, s. 56. Transmission of interest on death. Securing payment of succession duty. Rev. Stat., c. 378.

INCREASE OR DECREASE OF CAPITAL STOCK AND SUBDIVISION OF SHARES

58.—(1) The directors of any provincial corporation may, at any time after 90 per cent of the permanent capital stock of the corporation has been subscribed and 90 per cent thereof paid in, but not sooner, by by-law provide for the increase of the permanent capital stock to any amount that the directors may consider requisite. Increase of permanent capital stock.

(2) The directors may at any time by by-law provide for the decrease of the permanent capital stock to any amount, not less than \$100,000, that they may consider sufficient. Decrease of permanent capital stock.

(3) The by-law shall declare the number and par value of the shares of the stock so increased or decreased and provide for the manner in which they are to be allotted, or the rule or rules by which the allotment is to be made. By-law to declare number and par value of new shares.

(4) The directors may pass a by-law providing upon terms therein stated for the conversion of partly paid up shares into paid up shares or for subdividing shares or altering the par value of shares of its permanent capital stock. Conversion of partly paid up shares.

(5) The liability of shareholders to persons who, at the time the stock or shares are so increased, decreased, converted or altered, are creditors of the corporation shall remain as though the stock or shares had not been increased, decreased, converted or altered. Rights of creditors preserved.

(6) Where it is proposed to pass a by-law under this section that will have the effect of increasing or decreasing the permanent capital stock of the corporation or altering the liability of any holder of such stock, a copy of the proposed by-law shall be delivered to the Registrar and shall not be passed for at least six weeks thereafter. Copy to Registrar.

Notice of
by-law to
shareholders.

(7) Before submission of any such by-law to a meeting of shareholders, as provided in subsection 8, such notice shall be given by publication and otherwise as the Registrar directs.

Such by-laws
relating to
stock to be
confirmed
by Order
in Council.

(8) No by-law for, or having the effect of, increasing or decreasing the permanent capital stock of the corporation, whether such stock is or is not subscribed or issued, or for, or having the effect of, subdividing the shares of the corporation or altering the par value of such shares, or altering the liability of any holder of such shares, or converting partly paid up shares into paid up shares, shall have any force or validity until it has been duly adopted and ratified by a vote of shareholders present or represented by proxy at a general meeting of the corporation duly called for considering such by-law, and holding not less than two-thirds of the issued capital stock of the corporation represented at such meeting, and has afterwards been confirmed by the Lieutenant-Governor in Council.

When con-
firmation
may be
granted.

(9) The Lieutenant-Governor in Council may grant such confirmation, if he is satisfied of the *bona fide* character of the changes provided for in the by-law, unless it appears that the confirmation of the by-law would not be in the public interest.

Varying
by-law on
confirma-
tion.

(10) With the consent of the corporation, evidenced by a resolution of the directors, the changes provided for in any such by-law may be varied or amended by the confirming Order in Council, and may be made subject to such conditions as the Lieutenant-Governor in Council may deem proper.

Evidence of
confirma-
tion by
Lieutenant-
Governor
in Council.

(11) The confirmation by the Lieutenant-Governor in Council may be evidenced by a certificate of the Minister or by a certified copy of the Minister's certificate in the like manner and with the like effect as provided in sections 100 and 101.

Certificate
to be
conclusive.

(12) Such certificate shall be conclusive evidence of all matters therein certified or declared, and of the due performance of all matters precedent or preliminary to the granting thereof. 1949, c. 52, s. 57.

BOOKS

Record
books to
be kept, and
contents
thereof.

59.—(1) Every corporation having its head office in Ontario shall cause the secretary, or some other officer specially charged with the duty, to keep a book or books wherein shall be kept recorded,

- (a) a copy of the letters patent and of any supplementary letters patent issued to the corporation and, if incorporated by special Act, a copy of such Act, and the by-laws of the corporation duly authenticated;
- (b) the names, post office addresses, so far as known, of all persons who are or have been directors of the corporation, with the date on which each became and ceased to be a director;
- (c) the names, alphabetically arranged, of all persons who are shareholders of the corporation;
- (d) the post office address, so far as known, of every such person while he is a shareholder;
- (e) the number of shares held by each shareholder;
- (f) the amounts paid in, and remaining unpaid, on the shares of each shareholder; and
- (g) the date and other particulars of all transfers of shares in the order in which they were made.

(2) Such books shall be kept at the head office of the corporation. Books to be kept at head office.

(3) Any director, officer or employee of a corporation who removes or assists in removing such books from Ontario or who otherwise contravenes the provisions of this section shall be guilty of an offence and liable to a penalty of \$200. Penalty.

(4) Upon necessity therefor being shown and adequate assurance given that such books may be inspected within Ontario by any person entitled thereto after application for such inspection to the Registrar, the Lieutenant-Governor in Council may relieve any corporation from the provisions of subsection 2 upon such terms as he may see fit. Relief from operation of section.

(5) Such books shall, without the payment of any fee or charge, be open during business hours for inspection by any shareholder, depositor, debenture holder or holder of a guaranteed investment certificate, by himself, his agent or his personal representative, and any such person may make extracts therefrom. Books to be open for inspection.

(6) Every such corporation that neglects to keep such book or books shall be liable to forfeit its registry under this Act, and, if a provincial corporation, shall also be liable to forfeit its corporate franchise and rights. Forfeiture for neglect.

(7) No auditor, director, officer or servant of the corporation shall knowingly make or assist in making any untrue entry Penalty for false entries.

in any such book, or shall refuse or neglect to make any proper entry therein.

Liability for damages.

(8) Any person violating this section shall be liable in damages for all loss or injury that any person interested may have sustained thereby. 1949, c. 52, s. 58.

Register of securities.

60. Every corporation shall keep a register or registers of all securities held by the corporation. 1949, c. 52, s. 59.

Terminating Shares Book.

61.—(1) Every loan corporation in which and so long as there are any holders of terminating shares or stock shall keep a book, or books, to be known as the "Terminating Shares Book", in which shall be entered the name and address of every such shareholder, the number and amount of shares from time to time taken by him, and his several payments thereon, the interest or profits earned by his shares, also the repayments or the advances, if any, made by the corporation on account of his shares.

Entry of forfeiture.

(2) In any case of forfeiture of shares an entry shall be made thereof, with the date of the forfeiture. 1949, c. 52, s. 60.

Application of subss. 6 to 8 of s. 59.

62. Subsections 6 to 8 of section 59 shall apply to the registers prescribed by section 60 and subsections 5 to 8 of section 59 shall apply to the books prescribed by section 61. 1949, c. 52, s. 61.

Property in books of account.

63.—(1) The books used by any auditor, officer, collector or agent for verifying or recording money received for the corporation shall be the property of the corporation.

Idem.

(2) Neither the foregoing persons, nor any solicitor, counsel or other person shall have in or upon these or any other of the books of account or record of the corporation any ownership or proprietary right or any right of lien.

Penalty.

(3) Any person who, in contravention of this section, withdraws, withholds or detains any of such books from the possession or control of the directors, or from the receiver or liquidator of the corporation, shall be guilty of an offence. 1949, c. 52, s. 62.

After decease, bankruptcy, etc., of officer, books, etc., to be delivered to corporation.

64. Where a person who has been but has ceased to be a director, manager, auditor, officer, agent, collector, servant or employee of a corporation, or any other person unlawfully retains possession of any accounts, books, money, securities, papers, matters or things that are the property of the cor-

poration, a judge of the Supreme Court or of a county or district court, on application of the corporation or any depositor or shareholder therein or of the Registrar, and upon notice to the person affected, may order that such accounts, books, money, securities, papers, matters and things be forthwith delivered to such person as the judge may direct and in default that the person so retaining possession shall be imprisoned for such period as the judge may direct or until he complies with the direction of the order, and may authorize the sheriff of any county or district in which the same may be found forthwith to seize and take such accounts, books, money, securities, papers, matters and things and deliver the same to the person to whom they have been directed to be delivered. 1949, c. 52, s. 63.

65.—(1) In any action or proceeding against a corporation the books mentioned in sections 59 and 60 shall be *prima facie* evidence of the facts purported to be thereby stated. Books as evidence.

(2) The books of a corporation shall be *prima facie* evidence of the truth of all matters purporting to be therein recorded as between the corporation and its shareholders, and as between its shareholders. 1949, c. 52, s. 64. Idem.

AUDIT; STATEMENT TO SHAREHOLDERS

66.—(1) The accounts of a registered corporation shall be examined at least once in every year and the correctness of the balance sheet shall be ascertained by two or more auditors, who shall be accountants. Annual audit.

(2) The first auditors of a corporation may be appointed by the directors before the first meeting of the shareholders and shall hold office until the first general meeting. First auditors.

(3) Thereafter the auditors shall be appointed by resolution at a general meeting of the corporation and shall hold office until the next annual meeting unless previously removed by a resolution of the shareholders in general meeting. Appointment of auditors.

(4) The auditors may be shareholders in the corporation, but no person shall be eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the corporation, and no director, officer or employee of the corporation shall be eligible during his continuance in office. Auditors may be shareholders.

(5) If an appointment of auditors is not made at an annual meeting, the Registrar may, on the application of any shareholder of the corporation, appoint an auditor of the corporation for the current year, and fix the remuneration, if any, to be paid to him by the corporation for his services. Registrar may appoint.

Directors
may fill
vacancies.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act, and any auditor shall be eligible for re-appointment.

Suspension
of auditors.

(7) The directors may, by a two-thirds vote, suspend any auditor for incapacity, misconduct or negligence until the next general meeting of the corporation, and in the event of suspension shall appoint an auditor *ad interim*.

Remunera-
tion of
auditors.

(8) The remuneration of the auditors shall be fixed by the corporation in general meeting, except that the remuneration of any auditors appointed before the first general meeting or to fill any casual vacancy may be fixed by the directors.

Auditor's
right of
access to
books.

(9) Every auditor shall have right of access at all times to the books and accounts, cash, securities, documents and vouchers of the corporation, and shall be entitled to require from the directors and officers of the corporation such information and explanation as he may require.

Checking
cash and
verifying
securities.

(10) It shall be the duty of the auditors, at least once during their term of office, to check the cash and verify the securities of the corporation at the chief office of the corporation, against the entries in regard thereto in the books of the corporation, and, should they deem it necessary, to check and verify in the same manner the cash and securities at any branch or agency.

Report to
share-
holders.

(11) The auditors shall make report to the shareholders,

- (a) that they have examined the books for the year ending 31st day of December and have verified the cash, bank balances and securities of the corporation and stating whether or not their requirements as auditors have been complied with;
- (b) that they have examined the statement and that it agrees with the books of the corporation;
- (c) that after due consideration they have formed an independent opinion as to the position of the corporation;
- (d) that with their independent opinion so formed and according to the best of their information and the explanations given them they certify that in their opinion the statement sets forth fairly and truly the state of the affairs of the corporation;

- (e) that all transactions of the corporation that have come within their notice have been within the powers of the corporation. 1949, c. 52, s. 65.

67.—(1) Every corporation shall at least once in every year cause to be prepared a general statement of its affairs in the form prescribed by the Registrar. Annual statement to shareholders.

(2) Every such statement shall have on the head thereof a printed notice in conspicuous type stating that the statement is the statement of the corporation. to state that it is corporation's statement;

(3) Every such statement shall be attested by the signature of the president or vice-president and the managing director or some other principal officer of the corporation and shall contain a certificate signed by the auditors reporting as provided in section 66. attesting and verifying;

(4) A copy of such statement shall be mailed or delivered without charge to every shareholder of the corporation at least 10 days before the annual meeting. to be mailed or delivered to shareholders;

(5) A copy of such statement shall be mailed or delivered without charge to any debenture holder, holder of guaranteed investment certificate or depositor of the corporation who requests the same. 1949, c. 52, s. 66. to debenture holders, etc.

BORROWING POWERS OF LOAN AND LOANING LAND CORPORATIONS

68. Sections 69 to 74 shall apply to every loan corporation and loaning land corporation incorporated under the law of Ontario or having its head office in Ontario, and also to every loan corporation borrowing in Ontario by taking deposits or issuing debentures or like obligations, and to every loaning land corporation so borrowing by issuing debentures or like obligations. 1949, c. 52, s. 67. Application of ss. 69 to 74.

69.—(1) No corporation constituted with joint stock capital, unless and until it has a subscribed permanent stock of at least \$300,000 on which at least \$100,000 has been actually paid in and is unimpaired, and no corporation constituted without joint stock capital, unless and until it has a paid up, unimpaired, permanent and non-withdrawable capital of at least \$100,000, shall exercise any of the borrowing powers conferred by this Act. Amount of capital to be subscribed and paid before borrowing.

(2) Where a corporation constituted with joint stock capital has subscribed permanent stock of at least \$300,000 on which at least \$100,000 has been actually paid in and is unimpaired, Borrowing powers.

or where a corporation constituted without joint stock capital has a paid up, unimpaired, permanent and non-withdrawable capital of at least \$100,000, subject to the limitations and restrictions contained in this Act, the directors, pursuant to powers conferred in that behalf by any by-laws or rules of the corporation passed at any general meeting, called with due notice of such proposed by-laws and rules, may borrow money on behalf of the corporation at such rates of interest, and upon such terms as they from time to time think proper, and may for that purpose, subject as hereinafter provided, receive money on loan or on deposit, other than and in addition to money received in respect of shares of the corporation, and issue terminable debentures, bonds and other obligations, as well as execute mortgages under the seal of the corporation, for sums of not less than \$100 each, or may assign, transfer or deposit by way of equitable mortgage or otherwise, for the sum so borrowed, any of the documents of title, deed, muniments, securities or property of the corporation, and either with or without power of sale or other special provisions, as they deem expedient. 1949, c. 52, s. 68.

Loan
corporation
receiving
money on
deposit.

70.—(1) A corporation shall not, without the express consent of the shareholders given at a general meeting called with due notice of the proposal, receive money on deposit, otherwise than in respect of shares of the corporation, and when money is otherwise received on deposit the same shall, for the purposes of this Act, be deemed to be money borrowed by the corporation, and with interest thereon as agreed shall be repayable by the corporation either at a time certain, or upon notice, not being less than 30 days, unless notice, or such notice, is waived.

Loaning
land cor-
poration.

(2) A loaning land corporation shall not be entitled to receive deposits.

Ranking of
creditors
on deposits.

(3) In respect of deposits, creditors shall rank upon the assets of the corporation *pari passu* with the holders of debentures.

Limit of
deposits.

(4) The amount to be received by any corporation entitled to receive deposits shall not at any time exceed an amount equal to twice the aggregate amount of the then actually paid in and unimpaired permanent capital and of the then actual reserve fund of the corporation plus the amount of its cash actually in hand or in any chartered bank to the credit of the corporation and beneficially owned by the corporation and not included in either the permanent capital or reserve fund; provided that subject to the limitation set out in subsection 2 of section 73, the Lieutenant-Governor in Council

may, upon such terms and conditions as may be prescribed, increase the amount of deposits that may be received by any such corporation.

(5) No dividend or bonus shall be paid or declared either wholly or in part out of the reserve fund that has the effect of diminishing such aggregate below the amount required by this Act for the borrowings of the corporation. 1949, c. 52, s. 69.

Dividends, etc., not to be paid out of reserve.

71. No by-law for any of the purposes mentioned in sections 69 and 70 shall take effect until it is confirmed by a vote of shareholders present or represented by proxy at a general meeting of the corporation duly called for considering such by-law, and holding not less than two-thirds of the issued capital stock of the corporation represented at such meeting. 1949, c. 52, s. 70.

Confirming by-law.

72. Every loan corporation shall at all times maintain cash on hand and on deposit, debentures, bonds, stock or other securities of a kind referred to in section 145, and loans payable on demand and fully secured by such securities, to an aggregate amount of at least 20 per cent of the amount of money deposited with the corporation. 1949, c. 52, s. 71.

Reserves required on deposits.

73.—(1) Debentures shall be for such sums, not being less than \$100, and in such currency as the directors deem advisable, and shall be payable not less than one year from the issue thereof, at such place as may be therein mentioned.

Denomination and term of debentures.

(2) The total amount borrowed by a corporation on debentures and other securities and by way of deposits shall not exceed four times the aggregate amount of the then actually paid in and unimpaired permanent capital and of the then actual reserve fund of the corporation, plus the amount of its cash actually on hand or in any chartered bank of Canada, to the credit of the corporation and beneficially owned by the corporation and not included in either the permanent capital or reserve fund, provided that the Lieutenant-Governor in Council may, on the report of the Registrar, and upon such terms and conditions as may be prescribed, increase the amount which may be borrowed, to a sum not exceeding 10 times the aggregate amount from time to time of such permanent capital and reserve fund plus cash. 1949, c. 52, s. 72.

Limit of borrowing powers of loan corporations.

74. In ascertaining the extent of the borrowing powers of a corporation all loans or advances to its shareholders upon the security of their shares shall be deducted from the amount of the paid in capital. 1949, c. 52, s. 73.

Deduction to be made in estimating the paid in capital.

POWERS OF TRUST COMPANIES

Powers
conferred
on trust
companies.

75. Subject to sections 78, 79 and 80, a provincial trust company may and any other registered trust company that has capacity to do so may,

- (a) take, receive and hold all estates and real and personal property that may be granted, committed, transferred or conveyed to the company with its consent, upon any trust or trusts whatsoever not contrary to law, at any time or times, by any person or persons, body or bodies corporate, or by any court of competent jurisdiction;
- (b) take and receive as trustee or as bailee, upon such terms and for such remuneration as may be agreed upon, deeds, wills, policies of insurance, bonds, debentures or other valuable papers or securities for money, jewelry, plate or other chattel property of any kind, and to guarantee the safe keeping of the same;
- (c) receive and store for safe keeping all kinds of securities and personal property and rent spaces or compartments for the storage of securities or personal property and enter into all legal contracts for regulating the terms and conditions upon which such business shall be carried on;
- (d) act generally as attorney or agent for the transaction of business, the management of estates, the collection of loans, rents, interest, dividends, debts, mortgages, debentures, bonds, bills, notes, coupons and other securities for money;
- (e) act as agent for the purpose of issuing or countersigning certificates of stock, bonds or other obligations of any association or municipal or other corporation, and to receive, invest and manage any sinking fund therefor on such terms as may be agreed upon;
- (f) accept and execute the offices of executor, administrator, trustee, receiver, liquidator, assignee, custodian, trustee in bankruptcy, or of trustee for the benefit of creditors, and of guardian of any minor's estate, or committee of any mentally incompetent person's estate, and to accept the duty of and act generally in the winding up of estates, partnerships, companies and corporations;
- (g) invest any trust money in the hands of the company in any securities in which private trustees may by law invest trust money;

- (h) guarantee any investment made by the company as trustee, agent or otherwise;
- (i) sell, pledge or mortgage any mortgage or other security, or any other real or personal property held by the company, and make and execute all requisite conveyances and assurances in respect thereof;
- (j) make, enter into, deliver, accept and receive all deeds, conveyances, assurances, transfers, assignments, grants and contracts necessary to carry out the purposes of the company, and promote its objects and business;
- (k) charge, collect and receive all proper remuneration, legal, usual and customary costs, charges and expenses for all such services, duties and trusts. 1949, c. 52, s. 74.

76.—(1) In this section, “common trust fund” means a fund maintained by a trust company in which moneys belonging to various estates and trusts in its care are combined for the purpose of facilitating investment. Interpretation.

(2) Notwithstanding this or any other Act, any provincial trust company and any other registered trust company that has capacity to do so may, unless the trust instrument otherwise directs, invest trust money in one or more common trust funds of the company and where trust money is held by the company as a co-trustee, the investment thereof in a common trust fund may be made by the company with the consent of its co-trustees whether the co-trustees are individuals or corporations. Common trust funds authorized.

(3) The Lieutenant-Governor in Council may make regulations with respect to the establishment and operation of common trust funds and the investment of trust money in such funds. 1950, c. 38, s. 2, *part*. Regulations.

77. A provincial trust company shall not have power to take deposits by way of borrowing money. 1949, c. 52, s. 75. Trust companies not to borrow by accepting deposits.

78.—(1) Subject to section 134, a provincial trust company, and any other registered trust company that has capacity to do so, may receive deposits of money repayable upon demand or after notice and may pay interest thereon at such rates and on such terms as the company may from time to time establish, and the company shall be entitled to retain the interest and profit resulting from the investment or loaning of such deposit money in excess of the amount of interest payable to depositors. Deposits. power to receive;

to be
deemed
trust moneys
and to be
guaranteed;

(2) Every trust company receiving deposits in the manner authorized by subsection 1 shall be deemed to hold the same as trustee for the depositors and to guarantee repayment thereof, and there shall be ear-marked and definitely set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection "cash" includes moneys on deposit and "securities" includes loans made upon securities.

record of.

(3) Every trust company receiving moneys on deposit under this section shall keep a record in the form approved by the Registrar, in which shall be entered all sums so received and the names and addresses, so far as known, of the persons from whom they are received. 1949, c. 52, s. 76.

Debentures.

79. A provincial trust company shall not have power to borrow money by issuing debentures. 1949, c. 52, s. 77.

Money for
investment.

80.—(1) Subject to section 134, a provincial trust company, and any other registered trust company that has capacity to do so, may receive money for the purpose of its being invested by the company, and may guarantee the repayment of money so received and the payment of the interest thereon at such rate as may be agreed upon on fixed days.

Guarantee.

(2) Such guarantee by the company shall not be deemed to be a debenture and the money shall not be deemed to be money borrowed by the company by issuing debentures but to be money received in trust, and in such cases, the company shall be entitled to retain the interest and profits resulting from the investment or loaning of such moneys in excess of the amount of interest payable thereon.

Securities
allocated to
guaranteed
investment.

(3) Where it is provided by the agreement under which moneys are received by the company for guaranteed investment as mentioned in subsection 1 that specific securities shall be allocated in respect thereof, such securities shall be ear-marked and definitely set aside in respect thereof, and in respect of all other moneys received for guaranteed investment as mentioned in subsection 1 there shall be ear-marked and definitely set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection "cash" includes moneys on deposit and "securities" includes loans made upon securities. 1949, c. 52, s. 78.

Extent of
liability.

81.—(1) The liability of a trust company to persons interested in an estate held by the company as executor, administrator, trustee, receiver, liquidator, assignee, guardian,

or committee shall be the same as if the estate had been held by any private person in the like capacity, and the company's powers shall be the same.

(2) Where a trust company is authorized to execute the office of executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee, and the Lieutenant-Governor in Council approves of the company being accepted as a trust company for the purposes of the Supreme Court, every court or judge having authority to appoint such an officer may, with the consent of the company, appoint the company to exercise any of such offices in respect of any estate or person under the authority of such court or judge, or may grant to the company probate of any will in which the company is named as an executor; but no company that has issued or has authority to issue debentures or debenture stock, or which has received or has authority to receive deposits, except in the manner authorized by this Act, shall be approved.

Approval of company as executor, etc.

(3) A trust company so approved may be appointed to be a sole trustee, notwithstanding that but for this Act it would be necessary to appoint more than one trustee.

Appointment of company as sole,

(4) A trust company so approved may be appointed to any of the offices mentioned in subsection 2 jointly with another person.

or joint trustee.

(5) Such appointment may be made whether the trustee is required under any deed, will or document creating a trust or whether the appointment is under *The Trustee Act* or otherwise.

When appointment may be made by court.
Rev. Stat., c. 400.

(6) Notwithstanding any rule or practice or any provision of any Act requiring security, it shall not be necessary for the company to give any security for the due performance of its duty as such executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee unless otherwise ordered.

Security not required.

(7) The Lieutenant-Governor in Council may at any time revoke the approval given under this section. 1949, c. 52, s. 79.

Revocation of approval.

82. Every trust company shall at all times maintain cash on hand and on deposit, debentures, bonds, stocks or other securities of a kind referred to in subsection 3 of section 144 and loans payable on demand and fully secured by such securities, to an aggregate amount of at least 20 per cent of the amount of money deposited with the company in the manner authorized by subsection 1 of section 78. 1949, c. 52, s. 80.

Reserves required on deposits.

GENERAL POWERS

Powers of corporation as to benefit funds, etc., for employees and their families.

83.—(1) Every corporation may establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company, or its predecessors in business, or the dependants or connections of such persons, and to grant pensions and allowances and make payments towards insurance or for any object similar to those set forth in this subsection, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object.

Declaration as to powers of corporation.

(2) Every provincial corporation shall be deemed to have possessed since the date of its incorporation the powers set forth in subsection 1 including the power to exercise such powers jointly with any registered corporation, by whatever authority incorporated, possessing the same or similar powers, in such a way as to benefit the employees, or ex-employees, of such corporations or predecessors in business of such corporations or the dependants or connections of such persons. 1949, c. 52, s. 81.

Suspension or revocation of charter.

84. The charter or other instrument of incorporation of a corporation may at any time, for cause shown to his satisfaction, be suspended or revoked by the Lieutenant-Governor in Council. 1949, c. 52, s. 82.

Capacity of corporations.

85. Every provincial corporation shall, unless it is otherwise expressly declared in the Act or instrument creating it, have and be deemed from its creation to have had the general capacity that the common law ordinarily attaches to corporations created by charter. 1949, c. 52, s. 83.

Extension of business beyond the Province.

86.—(1) Where the existence or operation of a provincial corporation is not by the Act or instrument creating it, limited in time or area the corporation may, in general meeting of the shareholders called for the purpose by notice duly given, pass a by-law authorizing its directors to extend the business of the corporation beyond Ontario, but in compliance with the law of the place to which the business may be so extended, and the directors may give effect to such by-law without being liable or responsible for any breach of trust in so doing.

Erection or purchase of buildings required for use of corporation.

(2) Where, as provided in this section, a provincial corporation carries on business outside of Ontario, the corporation may in general meeting of the shareholders called for the purpose by notice duly given, pass a by-law authorizing

the directors to invest the money of the corporation in the erection or purchase of buildings required for the occupation of the corporation in any place where the corporation is so carrying on business and in conformity with the law of such place. 1949, c. 52, s. 84.

87. A corporation may maintain a reserve fund out of its earnings or other income not required to meet its present liabilities. 1949, c. 52, s. 85. Reserve fund.

88.—(1) A corporation may pass a by-law prohibiting the loaning to shareholders upon the security of their shares, or, subject to the limitations contained in this section, may pass a by-law fixing the aggregate amount that may be loaned on such shares, and neither of such by-laws shall be repealed until all liabilities of the corporation are discharged. Prohibition or limitation of loans upon shares.

(2) Subject to subsection 1, the corporation may lend upon its own paid up stock to an amount not exceeding at any one time in the aggregate of all such loans 10 per cent of the corporation's paid up stock. Limitation as to loans on its own stock.

(3) No such loan shall exceed 80 per cent of the market price of the stock. 1949, c. 52, s. 86. Margin.

89. A corporation shall not, except in the manner provided by section 88, lend on its own shares with or without collateral security. 1949, c. 52, s. 87. Not to lend on own stock.

90.—(1) No corporation, and no director, officer or employee thereof, either personally or on behalf of such corporation, and no other company the majority of the capital stock of which is owned or controlled by such corporation, its shareholders, directors, officers or employees, shall, either directly or indirectly, transact the business of or act as insurance agent or broker within the meaning of *The Insurance Act*, or exercise pressure upon any borrower or mortgagor to place insurance for the security of such corporation, in or through any particular agency or brokerage office; provided that nothing in this section shall prevent such corporation from stipulating in its contract of loan that any required insurance must be effected with an approved insurer. Prohibition against acting as insurance agent. Rev. Stat., c. 183.

(2) Subsection 1 shall not apply to the director of a corporation who is able to satisfy the Superintendent of Insurance that the business of insurance is his major occupation. 1949, c. 52, s. 88. Exception.

Minors
may make
deposits.

91. A person not of the full age of 21 years may deposit money with a registered corporation in his own name, and the same may be repaid to him, and he may give a valid discharge therefor, notwithstanding his minority. 1949, c. 52, s. 89.

Trusts.

92.—(1) A corporation shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any share of its stock, or any deposit, guaranteed investment certificate or debenture may be subject.

Sufficient
discharge.

(2) The receipt of the person in whose name any such share, deposit, guaranteed investment certificate or debenture stands in the books of the corporation shall be a sufficient discharge to the corporation for any payment made in respect thereof, and a direction to transfer, signed by the person in whose name any such share, deposit, guaranteed investment certificate or debenture stands in the books of the corporation, shall be sufficient authority to the corporation for any transfer made in respect thereof, notwithstanding any trust to which the same may then be subject and whether the corporation has or has not had notice of the trust.

Application
of money
paid.

(3) A corporation shall not be bound to see to the application of the money paid upon such receipt. 1949, c. 52, s. 90.

Power of
attorney by
corporation.

93. A provincial corporation may, by writing under its seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute on its behalf, deeds to which it is a party in any capacity in any place situate within or without Ontario, and every deed signed by such attorney, on behalf of the corporation and under his seal, shall bind the corporation and have the same effect as if it were under the seal of the corporation. 1949, c. 52, s. 91.

Official
seal for use
abroad.

94.—(1) A provincial corporation may have a seal to be known as the "official seal" for use in any territory, district or place not situate in Ontario, which shall be a facsimile of the seal of the corporation, with the addition on its face of the name of the territory, district or place where it is to be used.

Authority
to agent to
affix seal.

(2) A corporation having an official seal may, by writing under its seal, authorize any person appointed for the purpose in any territory, district or place not situate in Ontario, to affix the same to any deed or other document to which the company is party in any capacity in that territory, district or place.

Certifying
date and
period of
sealing.

(3) The person affixing an official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(4) A deed or other document to which an official seal is duly affixed shall bind the corporation as if it had been sealed with the seal of the corporation. 1949, c. 52, s. 92. Effect of official seal.

AMALGAMATION OF CORPORATIONS AND PURCHASE AND SALE OF ASSETS

95.—(1) Any registered loan corporation or loaning land corporation may unite, merge, amalgamate and consolidate its stock, property, business and franchises with those of any other loan corporation or loaning land corporation in Canada, or may purchase the assets of any such corporation, or may sell its assets to any registered corporation, and for the purpose of carrying out such purchase or sale the purchasing corporation shall assume the liabilities of the vendor corporation, and may enter into such bond or agreement of indemnity with the corporation or the individual shareholders thereof, or both, as may be necessary, and the corporations may enter into the contracts and agreements necessary to such union, merger, amalgamation, consolidation, sale or purchase. Power to unite with other corporations and to purchase or sell assets.

(2) Sections 96 to 103 shall not apply to the purchase by a registered extra-provincial corporation of the assets of a corporation that is not registered under this Act. 1949, c. 52, s. 93. Sections 96-103 not to apply.

96.—(1) The directors of any corporation mentioned in section 95 may enter provisionally into a joint agreement under the seal of each of the corporations for the union, merger, amalgamation or consolidation of the corporations, or for the sale or purchase by the one corporation of the assets of the other corporation. Directors may make agreement for amalgamation or for purchase or sale of assets.

(2) The agreement shall prescribe the terms and conditions of the proposed transaction, and the mode of carrying the same into effect. Matters to be specified in agreement.

(3) If the two corporations are to be merged into one corporation, the agreement shall specify the name of the new or of the continuing corporation, and the number of directors and the officers thereof, and shall state who are to be the first directors and officers, the capital stock, the number of shares into which such stock is divided, the par value of the shares and the manner of converting the capital stock of each of the existing corporations into that of the new or continuing corporation. Idem.

(4) The agreement shall contain such other details as the directors of the corporations deem necessary to perfect the new organization, and the union, merger, amalgamation and consolidation, and the after management and working thereof, Other details.

and to complete the terms and mode of payment for the assets of one corporation purchased or acquired by the other.

Consideration.

(5) In any agreement for the purchase and sale of assets, the consideration may consist wholly or in part of partly paid or of paid up shares of the permanent capital stock of the purchasing corporation.

Agreement to be subject to approval of shareholders.

(6) Such agreement, or if no agreement has been entered into but an offer has been made by a corporation under its seal for the purchase of the assets of another corporation, such offer shall be submitted to the shareholders of each corporation at a meeting thereof to be held separately for the purpose of taking the agreement or the offer into consideration.

Notice of meeting to consider agreement.

(7) Notice of the time and place of the meeting of the corporation in which he holds shares and the objects thereof shall be given by written or printed notice addressed to every shareholder, together with a copy of the proposed agreement, at his last known post office address, and also by a general notice in a newspaper published at the chief place of business of the corporation once a week for six successive weeks.

Notice to Registrar.

(8) A like notice, together with two copies of the proposed agreement, shall be delivered to the Registrar at least one month before the date of either of the meetings of shareholders called to consider it. 1949, c. 52, s. 94.

Proceedings to ratify agreement.

97. At each of the meetings of shareholders the agreement or offer shall be considered, and if at each meeting the agreement or offer is ratified or accepted by resolution passed by at least a three-fourths vote of such shares as are represented in person or by proxy and representing at least 50 per cent of the issued capital stock of the corporation, that fact shall be certified upon the agreement or offer by the secretary or manager under the seal of the corporation. 1949, c. 52, s. 95.

Dispensing with ratification.

98. The Lieutenant-Governor in Council, in the case of a proposed purchase of assets, may dispense with the ratification or acceptance of the agreement or offer by the shareholders of the purchasing corporation where it is shown to his satisfaction that the shareholders, after due notice thereof, have ratified a general resolution or by-law authorizing the purchase of the assets of any loan corporation upon the basis and within the limits specified in such agreement or offer. 1949, c. 52, s. 96.

Ratified agreement to be filed with Registrar.

99.—(1) If the agreement is ratified or the offer is accepted at the meeting of the shareholders of each of the corporations, or in the case provided for in section 98 at the meeting of the

shareholders of the selling corporation, the agreement or offer, with the certificates or certificate thereon, shall be filed with the Registrar.

(2) The Registrar shall submit the agreement or offer for the assent of the Lieutenant-Governor in Council.

(3) If the Lieutenant-Governor in Council assents thereto, the agreement or offer shall be deemed to be the agreement and act of union, amalgamation and consolidation of the corporations, or the agreement and deed of purchase and acquisition of the assets of the selling corporation by the purchasing corporation. 1949, c. 52, s. 97.

100.—(1) Upon proof that the foregoing requirements have been duly complied with the Minister shall issue a certificate under his hand and seal certifying the assent of the Lieutenant-Governor in Council and the date thereof, and declaring the purchase and the sale of the assets and the names of the corporations parties thereto, or, in the case of amalgamation, declaring the amalgamation of the corporations, naming them, and the name of the new or of the continuing corporation, together with such other matters, if any, as may appear to him necessary or desirable in the public interest.

(2) The certificate of the Minister shall for all purposes and in all courts be conclusive evidence of all matters therein certified or declared.

(3) The Registrar shall give public notice in *The Ontario Gazette* of the issue of the Minister's certificate.

(4) It shall be sufficient to register a certified copy of the Minister's certificate in each registry division or land titles office in which instruments affecting lands or interests in lands included or intended to be included in the transfer or amalgamation, are registered.

(5) The fee payable for the registration shall be \$1 if the certificate is five folios or less, and ten cents for each additional folio.

(6) Any document under the hand or purporting to be under the hand of the Registrar, certifying the document to be or to contain a true copy of the Minister's certificate or of any instrument referred to in the certificate, shall be registered in any registry division by the registrar thereof or by the master or local master of titles upon the same being tendered to him for registration accompanied by the proper fee.

Registration
in general
register.

(7) The certificate shall be entered in the general register of the registry division or in the book kept in the land titles office.

Certified
copies of
certificate.
Rev. Stat.,
c. 197.

(8) Copies so certified of any such certificate or instrument shall be received by the master of titles and local masters of titles, under *The Land Titles Act*, as conclusive evidence of all matters therein certified or declared.

Bills of
sale and
chattel
mortgages.

Rev. Stat.,
c. 36.

(9) For the purpose of any instrument required to be registered or filed under *The Bills of Sale and Chattel Mortgages Act*, it shall be sufficient in order to show the transmission of title in respect of any personal property or interest in personal property included or intended to be included in a transfer or amalgamation, such as is mentioned in section 99, and this section, if the instrument affecting such property or interest recites the certificate registered as provided in subsection 4 and states the registry division in which the same is registered and its registration number.

Application
of section.

(10) This section shall extend to and include any such certificate or certified copy issued or purporting to have been issued after the 13th day of April, 1897, under *The Loan Corporations Act*, being chapter 205 of the Revised Statutes of Ontario, 1897. 1949, c. 52, s. 98.

Evidence of
assent of the
Lieutenant-
Governor
in Council.

101. The Registrar may, by a certificate under his hand and seal endorsed upon or identifying the agreement or offer mentioned in subsection 6 of section 96, or any counterpart or copy thereof, certify that the agreement or offer has been assented to by the Lieutenant-Governor in Council, and his certificate with a copy of the Order in Council attached shall be *prima facie* evidence of such assent. 1949, c. 52, s. 99.

Assets of
selling
corporation
to vest in
purchasing
corporation.

102.—(1) In the case of a purchase and sale of assets so assented to, the assets of the selling corporation shall become vested in the purchasing corporation on and from the date of such assent without any further conveyance, and the purchasing corporation shall thereupon become and be responsible for the liabilities of the selling corporation.

Disposal of
assets by
purchasing
corporation.

(2) In dealing with the assets of the selling corporation it shall be sufficient for the purchasing corporation to recite the agreement and the assent of the Lieutenant-Governor in Council thereto, with the date of the assent.

Rights of
creditors.

(3) No such transfer shall affect the rights of any creditor of the transferring corporation.

(4) By every such agreement made or purporting to be made under this Act the purchasing corporation shall be deemed to covenant and agree with each creditor of the selling corporation that the purchasing corporation will pay to him the sum in which the selling corporation is indebted to him at such time and place as such sum would have been payable had such agreement not been made.

Privity of contract between purchasing corporation and each creditor of selling corporation.

(5) Where the Lieutenant-Governor in Council assents to an agreement for the sale of the assets of a corporation, or to an agreement for the amalgamation of two or more corporations, the selling corporation, or the several corporations amalgamated, as the case may be, shall, from the date of the assent, be dissolved except so far as is necessary to give full effect to the agreement. 1949, c. 52, s. 100.

Dissolution of selling corporation and of corporations amalgamated.

103.—(1) In the case of an amalgamation, the corporations parties thereto shall, from the date of the assent of the Lieutenant-Governor in Council, be consolidated and amalgamated and be merged in and form one corporation by the name stated in the Minister's certificate, and shall, subject to the law of Ontario, possess all the rights, privileges and franchises of each of the amalgamated corporations.

Property and rights of both companies vested in new corporation.

(2) From the date of the assent all the business, real and personal property, and all the rights and incidents appurtenant thereto, all stock, mortgages, or other securities, subscriptions and other debts due, and other things in action belonging to each of the corporations shall be vested in the new or continuing corporation without further act or deed.

Business and property vested in new corporation.

(3) All rights of creditors and liens upon the property of each of the corporations shall be unimpaired by the amalgamation.

Creditors' rights.

(4) All debts, liabilities and duties of each of the amalgamated corporations shall thenceforth attach to the new or continuing corporation, and may be enforced against it to the same extent as if the same had been incurred or contracted by it. 1949, c. 52, s. 101.

Debts and liabilities.

104.—(1) In this section, "fiduciary" includes trustee, bailee, executor, administrator, assignee, guardian, committee, receiver, liquidator or agent, and "instrument" includes every will, codicil, or other testamentary document, settlement, instrument of creation, deed, mortgage, assignment, Act of the Legislature, and a judgment, decree, order, direction and appointment of any court, judge, or other constituted authority.

Interpretation.

Power of trust companies to unite with other corporations and to purchase or sell assets.

(2) Any registered trust company may unite, merge, amalgamate and consolidate its stock, property, business and franchises with those of any other trust company in Canada or may purchase the assets of any corporation in Canada or may sell its assets to any registered trust company, and for the purpose of carrying out such purchase or sale the purchasing corporation shall assume the liabilities of the vendor corporation, and may enter into such bond or agreement of indemnity with the vendor corporation or the individual shareholders thereof, or both, as may be necessary, and the corporations may enter into the agreements necessary to such union, merger, amalgamation, consolidation, sale or purchase, and subsection 2 of section 95 and sections 96 to 103 shall apply *mutatis mutandis* thereto.

Where trust company purchases assets of loan corporation.

(3) In the case of a purchase of the assets of a loan corporation by a trust company pursuant to subsection 2, the trust company shall definitely set aside in respect of any debentures and deposits of the loan corporation of which the trust company assumes payment, securities, or cash and securities, equal to the aggregate amount of such debentures and deposits, and for the purposes of this subsection "cash" includes moneys on deposit and "securities" includes loans made upon securities.

Trusts to pass to new companies.

(4) On and from the assent of the Lieutenant-Governor in Council, as provided in subsection 1 of section 100, to the purchase and sale, or to the amalgamation, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon either of the corporations, parties to the purchase and sale, or to the amalgamation, shall be vested in and bind and may be enforced against the purchasing or new or continuing corporation as fully and effectually as if it had been originally named as the fiduciary in the instrument.

Subject matter of trust to vest in new company.

(5) Whenever in any instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in or administered or managed by or put in the charge of the selling corporation or of either of the amalgamated corporations as the fiduciary, the name of the new or continuing corporation shall be deemed to be substituted for the name of the old corporation, and such instrument shall vest the subject matter therein described in the new or continuing corporation according to the tenor of, and at the time indicated or intended by the instrument, and the new or continuing corporation shall be deemed to stand in the place and stead of the old corporation.

(6) Where the name of the selling corporation or of either of the amalgamated corporations appears as executor, trustee, guardian, or curator in a will or codicil, such will or codicil shall be read, construed and enforced as if the new or continuing corporation was so named therein, and it shall, in respect of the will or codicil, have the same status and rights as the selling or amalgamating corporation. References in will or codicil.

(7) In all probates, administrations, guardianships, curatorships or appointments of administrator or guardian *ad litem* issued or made by any court of Ontario to the selling corporation or to either of the amalgamated corporations, from which at the date of such assent it had not been finally discharged, the new or continuing corporations shall *ipso facto* be substituted therefor. 1949, c. 52, s. 102. Duties of old corporation not completed.

REGISTRAR

105.—(1) There shall be a Registrar and an assistant registrar who shall be appointed by the Lieutenant-Governor in Council. Appointment.

(2) The assistant registrar shall perform the duties of the Registrar in the case of the latter's absence or illness, or of a vacancy in the office of Registrar, and shall also perform such other duties as may be assigned to him by the Lieutenant-Governor in Council, by the Minister or by the Registrar. Assistant registrar, duties of.

(3) Without the leave of the Attorney-General, no action or proceeding shall be brought or taken against the Registrar or assistant registrar for anything done or omitted in the performance, or intended or supposed performance, of his duty under this Act. 1949, c. 52, s. 103. Actions against Registrar.

106. The Registrar shall have a seal of office, which shall bear upon its face the words "Registrar of Loan and Trust Corporations". 1949, c. 52, s. 104. Official seal.

107.—(1) The Registrar shall keep, Registers.

(a) a register to be called the "Loan Companies' Register", wherein shall be recorded the names of such loan corporations as are from time to time entitled to registry; Loan Companies' Register.

(b) a register to be called the "Loaning Land Companies' Register", wherein shall be entered the names of such loaning land corporations as are from time to time entitled to registry; and Loaning Land Companies' Register.

Trust
Companies'
Register.

(c) a register to be called the "Trust Companies' Register", wherein shall be entered the names of such trust companies as are from time to time entitled to registry.

No corpora-
tion to be
registered on
more than
one register.

(2) A corporation shall not be registered on more than one of such registers, and shall not transact or undertake business in Ontario other than the business for which it is registered. 1949, c. 52, s. 105.

Duties of
Registrar.

108.—(1) The duty of determining, distinguishing and registering the corporations that under this Act are required to be registered and are entitled to registry, and of granting registry accordingly, shall devolve upon the Registrar subject to appeal as provided in section 122.

Power to
require
evidence.

(2) For the purposes of his duties the Registrar may require to be made, or may take and receive affidavits or depositions, and may examine witnesses upon oath.

Employ-
ment of
stenog-
rapher.

(3) The evidence and proceedings in any matter before the Registrar may be reported by a stenographer who has taken an oath before the Registrar faithfully to report the same. 1949, c. 52, s. 106.

Annual
report.

109.—(1) The Registrar shall prepare for the Minister from statements filed by the corporations and from any inspection or inquiries made, an annual report, showing particulars of the business of each corporation as ascertained from such statements, inspection and inquiries, and the report shall be printed and published forthwith after completion.

Only
authorized
investments
allowed as
assets.

(2) In the report the Registrar shall allow as assets only such of the investments of the several corporations as are authorized by this Act or by their Acts of incorporation or by the general Acts applicable to such investments.

Corrections
in annual
statements.

(3) In the report the Registrar shall make all necessary corrections in the annual statements made by the corporations herein provided and shall be at liberty to increase or diminish the assets or liabilities of the corporations to the true and correct amounts thereof as ascertained by him in the examination of their affairs at the head office or any branch thereof or otherwise.

Appraise-
ment of
over-valued
real estate.

(4) If it appears to the Registrar or if he has any reason to suppose from the statements prepared and delivered to him by the corporations or otherwise, that the value placed by any corporation upon the real estate owned by it or any parcel thereof, is too great, or that the amount secured by mortgage or hypothec upon any parcel of real estate, together with interest due and accrued thereon is greater than the

value of the parcel or that the parcel is not sufficient for the loan and interest, or that the value of any investments of the funds of the corporation or of its trust funds is less than the amount of the value of the investments shown in the books of the corporation he may either require the corporation to secure an appraisal of such real estate or other security by one or more competent valuers or may himself procure such appraisal at the expense of the corporation and if it is made to appear that the value of such real estate or other security held, is less than the amount at which it is carried on the books of the corporation or is not adequate security for the loan and interest, he may write off such real estate, loan and interest, or investment, a sum sufficient to reduce the book value of the same to such amount as may fairly be realizable therefrom, such amount in no case to exceed the appraised value, and may insert such reduced amount in the report. 1949, c. 52, s. 107.

110.—(1) The Registrar or any person authorized under his hand and seal shall, with the approval of the Minister, have at any time within business hours access to the books, vouchers, securities and documents of a corporation, and any officer or person in charge, possession, custody or control of the books, vouchers, securities or documents refusing or neglecting to afford such access shall be guilty of an offence, and the corporation, if registered, shall be liable to have its registry suspended. Registrar to have access to corporation books, etc.

(2) The corporation, on continued refusal or neglect to afford such access, shall be liable to have its registry cancelled or not renewed after termination of the current certificate. Cancellation of registry for refusing access.

(3) Where a corporation is three months in default in the delivery of the financial statement required by section 146 or upon proof that its accounts have been materially and wilfully falsified, or that for 18 consecutive months there has been no *bona fide* audit of the books and accounts, or where there is filed with the Registrar a requisition for audit bearing the signatures, addresses and occupations of at least 25 shareholders of the corporation, holding shares upon which not less than \$10,000 has been paid in, and alleging to the satisfaction of the Registrar specific fraudulent or illegal acts, or repudiation of contracts, or insolvency, and accompanied by a deposit of \$300 or such less sum as the Registrar may fix as security to cover the costs of the audit, the Registrar may nominate a competent accountant who shall under his direction make a special audit of the corporation's books, accounts and securities, and make to him a written report thereupon verified upon oath. Special audit in case of fraud, etc.

Credentials
of auditor.

(4) A special auditor so appointed shall be sufficiently accredited if he delivers to the secretary or to any managing officer of the corporation a written statement under the hand and seal of the Registrar to the effect that the Registrar has nominated him to audit the books, accounts and securities of the corporation.

Expenses
of special
audit.

(5) The expense of a special audit shall be borne by the corporation, and the auditor's account therefor when approved in writing by the Registrar shall be conclusive and shall be payable forthwith.

Payment of
costs out
of deposit.

(6) Where the facts alleged in the requisition appear to the Registrar to have been partly or wholly disproved by the audit, and he deems it just, he may pay the costs of the audit partly or wholly out of the deposit.

Return of
balance of
deposit.

(7) The deposit or the balance, if any, remaining after payment of such costs shall be returned to the requisitioning shareholders upon the order of the Registrar.

Where
corporation
resists or
obstructs
audit.

(8) Where a corporation, by its officer, employee, servant or agent having in his custody, possession or power the funds, books, vouchers, securities or documents of the corporation, refuses to have the same duly audited as provided by section 66, or by this section or by section 111, or obstructs an auditor or examiner in the performance of his duties, the Registrar, upon proof of the fact, may suspend or cancel the registry of the corporation, or may terminate the registry upon the expiry of the current certificate of registry.

Report of
special
auditor.

(9) If the report of the special auditor appears to the Registrar to disclose fraudulent or illegal acts on the part of the corporation, or a repudiation of its contracts, or its insolvency, he shall notify the corporation accordingly and furnish it with a copy of the report, allowing two weeks for a statement in reply to be filed with him.

Registrar's
decision.

(10) Upon consideration of the report and of the corporation's statement in reply, and of such further evidence, documentary or oral, as he may require, the Registrar shall render his decision in writing, and may thereby continue or terminate, or suspend or cancel the registry of the corporation. 1949, c. 52, s. 108.

Appoint-
ment of
examiner.

111.—(1) The Minister, of his own motion or upon an application being made to him in writing, may appoint any competent person to make a special examination and audit of the corporation's books, accounts and securities, and to inquire into the conduct of the business of the corporation generally.

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that there is good reason for requiring the investigation to be made, and that it is not prompted by malicious motives. Evidence upon which inquiry to be ordered.

(3) The Minister may require security for the payment of the costs of the inquiry to be given before appointing the examiner. Security for costs.

(4) The examiner may summon witnesses and take evidence under oath, and generally, for the purposes of such examination, audit and inquiry, shall have the like powers as may be conferred on a commissioner appointed under *The Public Inquiries Act*. Powers of examiner as to summoning witnesses, etc. Rev. Stat., c. 308.

(5) Upon the conclusion of the examination, audit and inquiry the examiner shall make his report in writing to the Minister. Report to Minister.

(6) The Registrar may, by notice in writing, whenever he sees fit, require a corporation to make in addition to its annual or other returns required by this Act, a return verified by affidavit of one of its officers, or to furnish information verified in the same manner upon any subject connected with its affairs, and the corporation shall make the return within the time mentioned in the notice requiring the same. Additional information.

(7) The notice may be given to the president, secretary, managing director or other officer or officers having apparent control of the books of the corporation, or any of them in Ontario, and non-compliance with the notice shall be an offence. Notice.

(8) Upon the request of the Dominion Mortgage and Investments Association, the Minister shall appoint an examiner under subsection 1. 1949, c. 52, s. 109. Appointment of examiner.

112.—(1) A notice published in *The Ontario Gazette* over the name of the Registrar or assistant registrar shall, without further proof, be *prima facie* evidence of the facts set forth in the notice. Notice to be evidence.

(2) All copies of returns, reports or other official publications of the Registrar purporting to be printed by the King's Printer, or to be printed by order of the Assembly, shall, without further proof, be admitted as evidence of such publication and printing and as true copies of the originals. Official publications.

(3) A certificate under the hand of the Registrar or assistant registrar and the Registrar's seal of office, that on a stated day the corporation mentioned therein was or was not regis- Certificate as to registry.

tered, or that the registry of any corporation was originally granted, or was renewed, suspended, revived or cancelled, on a stated day, shall be *prima facie* evidence of the facts stated in the certificate.

Copies of
or extracts
from official
documents.

(4) Copies of, or extracts from, any book, record, instrument or document in the office of the Registrar or of or from any official instrument or document issued under this Act shall, if certified by him or by the assistant registrar to be true copies or extracts and sealed with the Registrar's seal of office, be held as authentic and shall be *prima facie* evidence of the same legal effect as the original. 1949, c. 52, s. 110.

Annual
inspection of
registered
corpora-
tions.

113.—(1) The Registrar personally shall visit or cause a duly qualified member of his staff to visit at least once annually the head office of each registered corporation, other than a corporation as to which he adopts the inspection of another government, and he shall inspect and examine the statements of the condition and affairs of each corporation and make such inquiries as are necessary to ascertain its condition and ability to provide for the payment of its liabilities as and when they become due, and whether or not it has complied with this Act, and the Registrar shall report thereon to the Minister as to all matters requiring his attention and decision.

Further
inspection.

(2) Where the Registrar deems it necessary and expedient to make a further examination into the affairs of a corporation and so reports to the Minister, the Minister may in his discretion instruct the Registrar to visit or cause any duly qualified member of his staff to visit any branch office or offices of the corporation to inspect and examine into its affairs and to make such further inquiries as the Minister may require.

Material to
be furnished
on inspec-
tion.

(3) For the purpose of an examination, the corporation shall prepare and submit to the Registrar such statements with respect to its business, finances or other affairs, in addition to the statement mentioned in this Act, as the Registrar may require, and the officers, agents and servants of the corporation shall cause their books to be open for inspection and shall otherwise facilitate such examination so far as it is in their power.

Production
of books.

(4) In order to facilitate the examination of the books and records of a corporation, the corporation may be required by the Registrar, with the approval of the Minister, to produce the books and records at the head office or chief office of the corporation in Ontario, or at such other convenient place as the Registrar may direct.

(5) The Registrar, or any person authorized by the Minister, may examine under oath the officers, agents or servants of the corporation for the purpose of obtaining any information that he deems necessary for the purpose of the examination. Examination.

(6) Where an examination is made under subsection 2 of any branch or other office situated outside of Ontario, the corporation shall pay the account in connection with the examination upon the certificate of the Registrar approved by the Minister. 1949, c. 52, s. 111. Expense of further inspection.

114.—(1) If, as the result of the examination, the Registrar is of opinion that the assets of the corporation are insufficient to justify its continuance in business, he shall make a special report to the Minister on the condition of the corporation. Special report where condition unsound.

(2) If the Minister, after a reasonable time has been given to the corporation to be heard by him, and upon such further inquiry and investigation as he sees fit to make, reports to the Lieutenant-Governor in Council that he agrees with the opinion of the Registrar, the Lieutenant-Governor in Council may, if he also concurs in the opinion, suspend or cancel the registry of the corporation, and the corporation shall thereupon cease to transact further business; provided that the Minister may, during such suspension or cancellation, issue such conditional registry as he may deem necessary for the protection of the public. Power to cancel or suspend registry.

(3) If the Minister deems it advisable, the conditional registry may provide that the corporation shall, during the continuance of the conditional registry, arrange for the sale of its assets and for the transfer of its liabilities. Sale and transfer under conditional registry.

(4) If upon the expiration of the conditional registry no arrangement satisfactory to the Minister has been made for such sale and transfer, and if in the opinion of the Minister the corporation's condition is not then such as to warrant the restoration of the corporation's registry, the registration shall be cancelled. 1949, c. 52, s. 112. When registration cancelled.

REGISTRATION

115.—(1) Applications for initial registry shall be made according to a form to be supplied by the Registrar, and the applicant shall deliver to the Registrar the application duly completed, together with such information, material and evidence as the form requires. Applications for initial registry.

(2) The applicant shall, if required, furnish such further information, material and evidence, and give such public notice of the application as the Registrar may direct. Material to be furnished.

Financial statement to accompany application.

(3) The applicant shall file with the application a statement in such form as may be required by the Registrar of the financial condition and affairs of the corporation on the 31st day of December next preceding or on the last day of the fiscal year of the corporation, if the last day is not more than 12 months before the filing of the statement, and the statement shall be signed and verified as prescribed by section 67. 1949, c. 52, s. 113.

Registration of extra-provincial corporations.

116.—(1) Where a corporation applying for registry has its head office elsewhere than in Ontario the application shall be accompanied by a power of attorney from the corporation to an agent or agents resident in Ontario.

Execution of power of attorney.

(2) The power of attorney shall be under the seal of the corporation, and shall be signed by the president and secretary or other proper officers thereof in the presence of a witness who shall make oath as to the due execution thereof.

Authentication.

(3) The official positions in the corporation held by the officers signing the power of attorney shall be verified by the oath of any person cognizant of the facts.

Contents of power of attorney.

(4) The power of attorney shall declare at what place in Ontario the chief agency of the corporation is, or is to be established, and shall expressly authorize the agent or agents to receive service of process in all actions and proceedings against the corporation in Ontario for any liability incurred by the corporation therein, and also to receive from the Registrar all notices that the law requires to be given, or which it is thought advisable to give, and shall declare that service of process for or in respect of such liability on any of the agents and receipt of the notices at the chief agency or personally by any of the agents shall be legal and binding on the corporation.

Filing of power of attorney.

(5) The power of attorney and the affidavit of execution shall be filed with the Registrar.

Authority conferred by power of attorney.

(6) The power of attorney may confer upon the agent or agents any further or other powers that the corporation may deem advisable.

Effect of copy as evidence.

(7) The production of a copy of the power of attorney certified by the Registrar shall be sufficient evidence for all purposes of the power and authority of the person or persons therein named to act on behalf of the corporation in the manner and for the purposes set forth in the certified copy.

(8) Whenever the corporation changes any of its agents or the chief agency in Ontario, it shall file with the Registrar a similar power of attorney, stating the change or changes and containing a similar declaration as to service of process and notices.

Changes in
chief agent
or agency.

(9) After the power of attorney is filed, any process in any action or proceeding against the corporation for a liability incurred in Ontario may be validly served on the corporation at its chief agency; but nothing in this section shall render invalid service in any other mode in which a corporation may be lawfully served.

Service of
process
thereafter.

(10) This section shall apply notwithstanding any special or other legislation of Ontario affecting any registered corporation. 1949, c. 52, s. 114.

Application
of section.

117.—(1) The Registrar shall cause to be entered on the proper register the name of every corporation entitled to registry, together with the date of the commencement of the registry and the term for which the registry is to endure.

Recording
registry;
entries on
register.

(2) The term shall begin on the date of such commencement and shall end not later than the 30th day of June next ensuing.

Term of
registry.

(3) The Registrar shall also cause to be entered on the register the place where the head office and the chief agency, if any, are situate, and if there is a chief agency the name and address of the chief agent, and of the agent or agents appointed under section 116.

Particulars
to be
entered.

(4) If the registry is suspended, revived, revoked or cancelled, the date of and authority for such suspension, revivor, revocation or cancellation shall also be entered.

Entering
suspension,
etc., of
registry.

(5) The Registrar shall issue under his hand and seal of office to every registered corporation a certificate of registry, setting forth that the corporation is entitled to registry as a (*describing the corporation*) under this Act, and that the corporation is accordingly registered for the term stated in the certificate.

Issue of
certificate of
registry.

(6) Every certificate of registry shall specify the first day and the last day of the term for which the corporation is registered, and the corporation so registered shall be deemed to be registered from the commencement of the first day to the end of the last day so specified.

Commence-
ment and
end of term.

(7) A certificate of registry that does not specify an earlier date of expiry shall, unless sooner suspended or cancelled,

Duration of
registry.

remain valid until the next ensuing 30th day of June, when, if the corporation has complied with the law and continues solvent, it shall be entitled to a certificate of renewed registry, and so on every succeeding 30th day of June thereafter.

Interim
certificate.

(8) Notwithstanding failure to comply with this Act within the prescribed time, the Registrar may, upon payment of the prescribed fee, grant an interim certificate of registry or extend the currency of a subsisting certificate. 1949, c. 52, s. 115.

Restrictions
upon use of
names.

118.—(1) No corporation shall be registered under a name identical with that under which any other existing corporation is registered, or under any other name likely, in the opinion of the Registrar, to deceive, mislead or confuse the public as to its identity.

New names.

(2) No registered corporation shall be registered under a new or different name except upon proof that such new or different name is authorized by law.

Change of
corporate
name.

(3) Where a provincial corporation desires to adopt a name different from that by which it was incorporated, or where, in the opinion of the Registrar, the name by which the corporation was incorporated may be confused with that of another existing corporation, the Lieutenant-Governor in Council may change the name of the corporation to some other name to be stated in the Order in Council.

Not to affect
rights or
obligations.

(4) No change of name shall affect the rights or obligations of the corporation.

Change of
head office.

(5) The location of the head office of a corporation may be changed in like manner.

Public
notice.

(6) Such public notice shall be given of any change of name or head office, and of any application for such change, in *The Ontario Gazette* and otherwise as the Registrar may direct. 1949, c. 52, s. 116.

What
admissible
to registry.

119.—(1) Trust companies whose powers do not include that of buying and selling land as beneficial owner except as authorized by this Act and do not exceed the powers that are conferred upon trust companies under this Act, loan corporations and loaning land corporations that are solvent and fall within one of the following classes, may, upon due application, be admissible to registry:

(a) Corporations duly constituted under the law of Ontario.

(b) Corporations which being duly incorporated or constituted under the laws of any other province of Canada, or of Canada, or of the United Kingdom, were in actual, active and *bona fide* operation in Ontario on the 16th day of April, 1912, but such corporations shall be admissible to registry only on due application and with the approval of the Minister and on such terms and conditions as he may prescribe.

(c) Corporations duly constituted as joint stock corporations under the laws of any other province of Canada or of Canada that issue only permanent shares and have a subscribed permanent stock of not less than \$300,000, whereof \$100,000 is paid in and unimpaired.

(2) Any registry purporting to have been made prior to 1st day of May, 1914, by any corporation mentioned in clause *b* of subsection 1 shall be deemed for all purposes to have been a registry under this Act from the date of commencement of such purported registry. Registry validated.

(3) A corporation incorporated under the laws of any other country may, upon due application, with the approval of the Minister, be admitted to registry on such terms and conditions as he may prescribe. Corporations of other countries.

(4) Any trust company authorized by a special Act of Ontario to carry on business in Ontario shall not be barred from registry merely because its powers exceed those conferred upon trust companies by this Act. Company authorized by special Act.

(5) Subject to subsection 3 of section 9, no other corporation shall be registered. 1949, c. 52, s. 117. No others.

120.—(1) Upon proof that registry or a certificate of registry has been obtained by fraud or mistake, or that a corporation exists for an illegal purpose, or is insolvent, or has failed to pay its obligations, or has wilfully, and after notice from the Registrar, contravened any of the provisions of this Act, or of the Act or instrument incorporating the corporation, or of any law in force in Ontario, or has ceased to exist, the registry of the corporation may be suspended or cancelled by the Registrar. Suspension or cancellation of registry.

(2) On the suspension or cancellation of the registry of any existing corporation the Registrar shall cause notice in writing thereof to be delivered to the corporation. Notice to be given to the corporation.

(3) Where the corporation has ceased to exist, the notice shall be published in *The Ontario Gazette*. Publication in Gazette.

Corporation to cease business except for winding-up purposes.

(4) After such suspension or cancellation, or after termination of registry without renewal, the corporation shall, unless again registered, cease to transact or undertake business in Ontario, except so far as is necessary for the winding up of its business; but any liability incurred by the corporation may be enforced against it as if such suspension, cancellation or termination had not taken place. 1949, c. 52, s. 118.

Decision of Registrar to be in writing and to be delivered to corporation.

121. Where in any disputed case the Registrar decides that a corporation is or is not legally entitled to registry, or to renewal of registry, or where he suspends, revives or cancels the registry of a corporation, his decision, except as otherwise provided, shall be given in writing, and he shall cause a copy thereof certified under his seal of office to be delivered to the corporation. 1949, c. 52, s. 119.

Review.

122.—(1) Any corporation whose registration or right to registration is affected by any decision of the Registrar may, by notice in writing served upon the Registrar within 30 days after the delivery of the copy of the decision under section 121, request a hearing and review of the matter by the Registrar.

Notice of hearing.

(2) Where a hearing and review is requested, the Registrar shall send a notice in writing to the corporation notifying it of the time and place of the hearing.

Evidence.

(3) Upon a review the Registrar may hear such evidence as may be submitted to him which in his opinion is relevant to the matter in dispute, and he shall not be bound by any law respecting the admissibility of evidence, and all oral evidence submitted shall be taken down in writing and together with such documentary evidence and things as are received in evidence by the Registrar shall form the record.

Powers on review.

(4) Upon a review the Registrar may confirm or revoke his former decision or may make alterations therein or additions thereto as he may deem proper.

Decision to be delivered.

(5) Notice of his decision made upon a review shall be delivered forthwith to the corporation that requested the review.

Appeal to Supreme Court.

(6) Where the Registrar has reviewed a decision and given his decision upon the review, the corporation that requested the review may appeal to a justice of appeal of the Court of Appeal.

Form of appeal.

(7) Every appeal shall be by notice of motion served upon the Registrar within 30 days after the delivery of the decision

under subsection 5, and the practice and procedure in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, provided that the Rules Committee may vary or amend such practice and procedure in respect of appeals taken under this section.

(8) The Registrar shall certify to the Registrar of the ^{Certificate of Registrar.} Supreme Court,

(a) the decision that has been reviewed by the Registrar;

(b) the decision of the Registrar upon the review, together with any statement of reasons therefor;

(c) the record of the review; and

(d) all written submissions to the Registrar and other material that in the opinion of the Registrar are relevant to the appeal.

(9) The Attorney-General may designate counsel to assist ^{Counsel.} the judge upon the hearing of any appeal taken under this section.

(10) Where an appeal is taken under this section, the judge ^{Order of judge.} may by his order direct the Registrar to make such decision as the Registrar is authorized to do under this Act and as the judge deems proper and thereupon the Registrar shall act accordingly.

(11) The order of the judge shall be final and there shall be ^{Further decision.} no appeal therefrom, but notwithstanding the order the Registrar shall have power to make any further decision upon new material or where there is a material change in the circumstances, and every such further decision shall be subject to this section. 1949, c. 52, s. 120.

123. The Registrar may at the request of the corporation, ^{Cancellation of registry by request of corporation.} evidenced as he may direct, cancel its registry. 1949, c. 52, s. 121.

124. A corporation not registered on the 1st day of July, ^{Where corporations not to be registered.} 1900, shall not be granted registry if the stock or shares of the corporation consist of or include terminating stock or shares. 1949, c. 52, s. 122.

125. If on receiving an application for registry the Minister finds in the by-laws of the applicant anything ^{Minister may direct amendment of by-laws.} repugnant to this Act or to the law of Ontario, he may direct

an amendment of the by-laws, and, upon their being amended as directed and returned certified as having been so amended, the application may be proceeded with. 1949, c. 52, s. 123.

Return of
evidence as
to by-laws.

126.—(1) Every corporation doing business in Ontario, if required so to do by the Registrar, shall furnish satisfactory evidence that any by-law has been duly passed, and is a legal and valid by-law according to the Act or instrument incorporating the corporation and also that the by-law conforms to the law of Ontario.

Refusal to
furnish
evidence.

(2) A corporation refusing or failing to furnish such evidence promptly shall be liable to have its registry suspended or cancelled. 1949, c. 52, s. 124.

Capital
required
before
registration.

127. No trust company shall be registered to transact business in Ontario that has not a capital paid in of at least \$100,000. 1949, c. 52, s. 125.

Representa-
tions that
standing of
corporation
is vouched
for by
Registrar.

128.—(1) No corporation shall under the penalty of becoming disentitled to registry or of having its registry suspended or cancelled make, print, publish, circulate, authorize or be a party or privy to the making, printing, publishing or circulating of any statement or representation that its solvency or financial standing is vouched for by the Registrar or that the publication of its statement in his report is a warranty or representation of the solvency of the corporation, or of the truth or accuracy of the statement in any particular.

Offence.

(2) Any director, auditor, officer, servant, employee or agent of a corporation who makes or uses or authorizes or is party or privy to the making or using of any such statement or representation shall be guilty of an offence. 1949, c. 52, s. 126.

UNREGISTERED CORPORATIONS

No unregis-
tered cor-
poration to
undertake
business.

129.—(1) No incorporated body or person acting in its behalf, other than a registered corporation and a person duly authorized by it to act in its behalf, shall undertake or transact in Ontario the business of a loan corporation, or of a loaning land corporation, or of a trust company.

Certain
matters to
be deemed
undertaking
business.

(2) Any setting up or exhibiting of a sign or inscription containing the name of the corporation, or any distribution or publication of any proposal, circular, card, advertisement, printed form or like document in the name of the corporation, or any written or oral solicitation on the corporation's behalf, or any collecting or taking of money on account of shares or of loans or advances shall, both as to the corporation and

as to the person acting or purporting to act on its behalf, be deemed undertaking the business of the corporation within the meaning of this section.

(3) Any promoter, organizer, manager, director, officer, collector, agent, employee, or person who undertakes or transacts any business of a corporation that is not registered under this Act shall be guilty of an offence. 1949, c. 52, s. 127.

No person to act as agent for unregistered corporation.

130. Any person, partnership, organization, society, association, company or corporation, not being a corporation registered under this Act or under *The Insurance Act*, assuming or using in Ontario a name which includes any of the words "Loan", "Mortgage", "Trust", "Trusts", or "Guarantee", in combination or connection with any of the words "Corporation", "Company", "Association" or "Society", or "Limited", or "Incorporated" or any abbreviations thereof, or in combination or connection with any similar collective term, or assuming or using in Ontario any similar name, or any name or combination of names that is likely to deceive or mislead the public shall be guilty of an offence, and any person acting on behalf of such person, partnership, organization, society, association, company or corporation shall also be guilty of an offence; but where any of such combinations of words formed part of the corporate name of any corporation duly incorporated by or under the authority of an Act of Ontario or of the Parliament of Canada prior to the 1st day of July, 1900, the combination may continue to be used in Ontario as part of the corporate name. 1949, c. 52, s. 128.

Use of certain words in name of company while unregistered. Rev. Stat. c. 183.

131.—(1) In this section, "contract" means any contract, agreement, undertaking or promise,

Interpretation.

- (a) to pay to or for the contract holder any money or money's worth;
- (b) to sell, supply or procure any building or site or land or to bring about the purchase and sale or supply thereof; or
- (c) to construct or procure the construction of any house or building,

made upon any consideration that includes an entrance or membership fee, or expense contribution, initial, renewal, periodical or recurrent, or that includes any periodical or recurrent contribution to a fund, or account, or source for, or intended or alleged to be for, the carrying out of such contract, and includes any contract, agreement, undertaking, or promise, the benefit of which to the contract holder paying any such consideration is to be wholly or partly postponed

or deferred until other contract holders have been provided for, or is to depend upon the number or the persistence of the other contract holders, or upon the accession of new contract holders, or upon the order or sequence of the contract.

Prohibition
of certain
contracts.

Rev. Stat.,
c. 183.

(2) Any person, partnership, organization, society, association, company or corporation, not being a corporation registered under this Act or under *The Insurance Act*, undertaking or effecting, or offering to undertake or effect, any contract shall be guilty of an offence, and any person acting on behalf of such person, partnership, organization, society, association, company or corporation, shall also be guilty of an offence, and the convicting magistrate or justices, in addition to imposing the prescribed penalty, may at the time of conviction or thereafter make such order for the restitution of the money that was unlawfully taken as to him or them seems just, and in default of compliance with such order the offender shall be liable to imprisonment for a term of not more than 12 months. 1949, c. 52, s. 129.

Use of sign,
name or
document
inducing
illegal
contract.

132. Where in any case arising under section 129, 130 or 131 it is found by the magistrate or justices that the person, partnership, organization, society, company or corporation charged or his or its agent is exhibiting or using any sign, inscription or name, or distributing, using or publishing any document, including any proposal, circular, card, advertisement, notice, application, contract or printed form which, in the opinion of the magistrate or justices, induces, or tends to induce, a violation of any such section, or is likely to deceive or mislead the public either as to the party or the status of the party undertaking the contract, or as to the nature, terms or effect of the contract, the magistrate or justices may summarily order the discontinuance of such sign, inscription, name or document, and non-compliance with such order shall be an offence. 1949, c. 52, s. 130.

INVESTMENTS

Securities,

133.—(1) A registered loan corporation and a registered loaning land corporation may purchase or invest in,

real estate
and life
insurance;

(a) mortgages, charges or hypothecs upon improved real estate in Ontario or elsewhere where the corporation is authorized to extend its business under section 86, or mortgages or assignments of such life insurance policies as have at the date of the loan or investment an ascertained cash surrender value admitted by the insurer;

government
bonds;

(b) the debentures, bonds, stock or other securities of or guaranteed by the government of Canada or of or guaranteed by the government of any province of

Canada, or of or guaranteed by the government of the United Kingdom, or of any of His Majesty's dominions, colonies or dependencies, or of any state forming part of any such dominion, colony or dependency, or of or guaranteed by any foreign country or state forming part of such foreign country where the interest on the securities of such foreign country or state has been paid regularly for the previous 10 years, or of any municipality or school corporation in Canada or elsewhere where the company is carrying on business, or guaranteed by any municipal corporation in Canada, or secured by rates or taxes levied under the authority of the government of any province of Canada on property situated in such province and collectible by the municipalities in which the property is situated;

- (c) the bonds, debentures, debenture stock, or other securities of any company or bank incorporated by Canada, or by any province of Canada, or by any former province now forming part of Canada, that are secured by a mortgage or hypothec to a trust company either singly or jointly with another trustee upon improved real estate of such company or bank or other assets of such company of the classes mentioned in clauses *a* and *b*; bonds secured by trust deed;
- (d) the bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the government of Canada has agreed to make, if such payments are sufficient to meet the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity; Dominion subsidy bonds;
- (e) the bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that are payable, by virtue of an Act of a province of Canada, by or under the authority of the province, if such payments are sufficient to meet the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity; provincial subsidy bonds;
- (f) equipment trust obligations or certificates issued to finance the purchase of transportation equipment for a railway company incorporated in Canada or for a railroad securities;

railway company owned or controlled by a railway company so incorporated which obligations or certificates are fully secured by an assignment of the transportation equipment to, or by the ownership thereof by, a trustee, and by a lease or conditional sale thereof to the railway company;

debentures;

- (g) the debentures or other evidences of indebtedness of any company or bank that has paid regular dividends on its preferred or on its common stocks for a term of at least five years immediately preceding the date of investment in the debentures or other evidences of indebtedness;

preferred stock;

- (h) the preferred stocks of any company or bank that has paid regular dividends upon such stocks or upon its common stocks for not less than five years preceding the purchase of the preferred stocks, or the stocks of any company that are guaranteed by a company that has paid regular dividends upon its preferred or common stocks for not less than five years preceding the purchase of the guaranteed stocks; provided that the amount of stocks so guaranteed is not in excess of 50 per cent of the amount of the preferred or common stocks, as the case may be, of the guaranteeing company; or

common stock.

- (i) the common stocks of any company or bank upon which regular dividends of at least four per cent per annum, or, in the case of stocks of no par value, of at least four dollars per share per annum, have been paid for the seven years next preceding the purchase of such stocks; provided that if any company has, pursuant to a voluntary re-organization of its capital account and without affecting the status or diminishing the value of its outstanding securities, including the capital stock, substituted common shares of no par value for shares of par value, then dividends declared on the said no par value stock shall be deemed to be dividends of at least four dollars per share per annum if the sum thereof is equivalent to at least four per cent of the said common stock of par value and the proceeds of any additional issue of common stock made at the time of, or subsequent to, the aforesaid substitution of shares, and in such circumstances dividends of at least four per cent per annum on the common stock of par value immediately preceding the substitution shall be regarded as dividends on the no par value stock; and provided further that

if any company has in any year paid dividends on its common stock amounting to not less than \$500,000, the payment of such dividends shall be deemed to be for the purposes of this section equivalent to the payment of a dividend of four per cent or four dollars per share for that year.

(2) In addition to investments it may make by lending on the security of or by purchasing mortgages, charges or hypothecs upon real estate pursuant to *The National Housing Act, 1944* (Canada), or any amendments thereto, a registered loan corporation or a registered loaning land corporation may invest its funds to an aggregate amount not exceeding five per cent of its total assets in Canada allowed by the Registrar in any other classes or types of investments pursuant to the said Act, or any amendments thereto, including the purchase of land, the improvement thereof, the construction of buildings thereon, and the management and disposal of such lands and buildings.

Investment in national housing.

1944-45, c. 46 (Can.).

(3) A registered loan corporation and a registered loaning land corporation may lend money on the security of,

Loans on securities by loan and loaning land corporations.

(a) any of the securities mentioned in clauses *a*, *b* and *c* of subsection 1, or on improved real estate or leaseholds, or on guaranteed investment certificates of a trust company; or

(b) the bonds, debentures, notes, shares or other securities of any company or bank, other than those mentioned in clause *c* of subsection 1, provided that the market value of the securities on which the loan is made shall at all times exceed the amount of the loan by at least 20 per cent of the market value, and provided further that the amount loaned on the security of the shares of any such company or bank shall not at any time exceed 10 per cent of the market value of the total outstanding shares of such company or bank. 1949, c. 52, s. 131.

134.—(1) A registered trust company may invest its funds and moneys received for guaranteed investment or as deposits in any of the securities mentioned in subsection 1 of section 133, provided that at all times at least 50 per cent of moneys received for guaranteed investment in the manner authorized by subsection 1 of section 80 or as deposits in the manner authorized by subsection 1 of section 78 shall be invested in or loaned upon such securities only as are authorized by *The Trustee Act*.

Investments by trust companies.

Rev. Stat., c. 400.

Investment
in national
housing.

1944-45,
c. 46 (Can.).

(2) In addition to the investments it may make by lending on the security of or by purchasing mortgages, charges or hypothecs upon real estate pursuant to the provisions of *The National Housing Act, 1944* (Canada), or any amendments thereto, a registered trust company may invest its funds to an aggregate amount not exceeding five per cent thereof and may, notwithstanding the provisions of subsection 1, invest moneys received for guaranteed investment or as deposits under sections 80 and 78 to an aggregate amount not exceeding five per cent of such moneys, in any other classes or types of investments pursuant to the said Act, or any amendments thereto, including the purchase of land, the improvement thereof, the construction of buildings thereon, and the management and disposal of such lands and buildings.

Loans
by trust
companies,

(3) Subject to the proviso in subsection 1, a registered trust company may lend its funds and moneys received for guaranteed investment or as deposits on the security of,

real estate,
etc.;

(a) any of the securities mentioned in clauses *a*, *b* and *c* of subsection 1 of section 133, or on improved real estate or leaseholds, or on guaranteed investment certificates of a trust company; or

bonds,
debentures,
etc.

(b) the bonds, debentures, notes, stocks or other securities of any company or bank, other than those mentioned in clause *c* of subsection 1 of section 133, provided that the market value of the securities on which the loan is made shall at all times exceed the amount of the loan by at least 20 per cent of the market value, and provided further that the amount loaned on the security of the stocks of any such company or bank shall not at any time exceed 10 per cent of the market value of the total outstanding stocks of such company or bank. 1949, c. 52, s. 132.

Personal
security as
collateral.

135.—(1) A corporation may take personal security as collateral for any advance or for any debt due to the corporation.

Power to do
acts and to
exercise
remedies.

(2) The corporation may do all acts that are necessary for advancing sums of money, and for receiving and obtaining repayment thereof, and for compelling the payment of all interest accruing due thereon, and the observance and fulfilment of any conditions annexed to the advance, and for enforcing the forfeiture of any term or property consequent on the non-fulfilment of such conditions, or of conditions entered into for delay of payment. 1949, c. 52, s. 133.

136.—(1) On and after the 14th day of April, 1925, no corporation shall, Restrictions on amount of investments.

(a) except as to securities issued or guaranteed by the government of Canada or the government of any province of Canada or by any municipal corporation in Ontario, invest in any one security or make a total investment in any one corporation, company or bank including the purchase of its stock or other securities, the lending to it on the security of its debentures, mortgages or other assets or any part thereof, of an amount exceeding 15 per cent of its own paid in capital stock and reserve funds;

(b) make any investment the effect of which will be that the corporation will hold more than 15 per cent of the stock or more than 15 per cent of the debentures of any one corporation, company or bank.

(2) In the case of a trust company, subsection 1 shall apply only to the investment of its funds and of moneys received for guaranteed investment or as deposits under sections 80 and 78. Trust company.

(3) This section shall not apply to an investment in the paid up capital stock of a trust company having its head office in Ontario if the same has been authorized by the Lieutenant-Governor in Council. 1949, c. 52, s. 134. Not to apply to certain companies.

137.—(1) The Lieutenant-Governor in Council may authorize the acceptance by a corporation of bonds, notes, stocks, debentures or other assets not fulfilling the requirements of this Act, Other investments authorized.

(a) obtained in payment or part payment for securities sold by the corporation; or

(b) obtained under a *bona fide* arrangement for the re-organization of a company whose securities were previously owned by the corporation; or

(c) obtained under an amalgamation with another company of the company whose securities were previously owned by the corporation; or

(d) obtained for the *bona fide* purpose of protecting investments previously made by the corporation; or

(e) obtained by virtue of the purchase by the corporation of the assets of another corporation,

but the bonds, notes, stocks or debentures or other assets whose acceptance is so authorized shall be sold and disposed of within five years after the acquisition thereof, or within such further time not exceeding one year as the Lieutenant-Governor in Council shall, on report of the Minister, fix and determine unless it can be shown to the satisfaction of the Minister that the bonds, notes, stocks, debentures or other assets whose acceptance is so authorized are not inferior in status or value to the securities for which they have been substituted.

Stocks of re-organized companies.

(2) For the purpose of determining the eligibility as investments under this Act of the preferred or common stocks of any company that has been voluntarily re-organized without the impairment of the status or value of its securities, dividends paid on the preferred and common stocks of the company before such re-organization may be counted as dividends paid on such stocks respectively of the re-organized company. 1949, c. 52, s. 135.

May hold certain estates and interests in land; and may dispose of same.

138.—(1) A registered corporation may hold real estate which, having been mortgaged or hypothecated to it, has been acquired by it for the protection of its investment, and real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, and may from time to time sell, mortgage, lease, exchange or otherwise dispose of the same, and may sell or otherwise dispose of as it deems advisable any mortgage or security that it has lawfully acquired.

Limitation of time for holding except in case of loaning land corporation.

(2) The corporation, not being a loaning land corporation registered under this Act, shall, subject to section 139, sell any real estate acquired by it under any mortgage, charge or hypothecation, or in satisfaction of any debt, within twelve years after it has been so acquired, otherwise it may be forfeited to His Majesty for the use of Ontario; but no such forfeiture shall be enforced until the expiration of six calendar months after notice in writing to the corporation of the intention of His Majesty to claim such forfeiture.

Powers and rights of grantors and grantees.

(3) The corporation may give receipts, acquittances and discharges, either absolutely and wholly or partially, and may grant or take such deeds, assignments or other instruments as are necessary for carrying any such holding, purchase, exchange or re-sale into effect, and the grantee or assignee in any such instrument shall stand in the place of, and be entitled to, and have all the same rights, powers and remedies, and shall be subject to the same obligations and liabilities as the grantor or assignor would have been entitled to or would have been subject to if the grant or assignment had not been made. 1949, c. 52, s. 136.

139. A registered corporation may hold to its own use and benefit such real estate as is necessary for the transaction of its business, or is acquired or held *bona fide* for building upon or improving for that purpose, and may sell, mortgage or dispose of the same. 1949, c. 52, s. 137.

Power to hold real estate for business.

140. A registered corporation, when so authorized by the letters patent or by the Lieutenant-Governor in Council, may acquire or may construct, on any lands held pursuant to section 139, a building larger than is required for the transaction of its business and may lease any part of the building not so required. 1949, c. 52, s. 138.

Power to construct larger building and to lease part thereof.

141. A provincial corporation shall not make or undertake any investment under section 139 or 140 that will cause the total amount at which such investments are carried on its books to exceed 35 per cent of its paid up capital and reserve funds. 1949, c. 52, s. 139.

Limit of amount of investments in buildings.

142. A corporation shall not lend or advance money to any of its directors or auditors or to the wife or child of any director or auditor. 1949, c. 52, s. 140.

Loans to directors and auditors prohibited.

143. The Registrar may request any corporation to dispose of and realize any of its investments acquired after the 14th day of April, 1925, and not authorized by this Act, and the corporation shall within sixty days after receiving the request dispose of and realize such investments, and if the amount realized therefrom falls below the amount paid by the corporation for such investments, the directors of the corporation shall be jointly and severally liable for the payment to the corporation of the amount of the deficiency; provided that if any director present when any such investment is authorized, forthwith, or if any director then absent, within twenty-four hours after he becomes aware of such investment, and is able to do so, enters his written protest against the same, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability. 1949, c. 52, s. 141.

Corporation may be required to dispose of unauthorized investments.

RETURNS

144.—(1) Every trust company receiving deposits in the manner authorized by subsection 1 of section 78 shall make a return to the Registrar on or before the 15th day of January in each year, drawn in accordance with the form prescribed by the Registrar, showing the amount of the deposits, and showing all securities including loans made upon securities, and cash, including money on deposit, ear-marked and

Annual returns of deposits and securities allocated.

definitely set aside as provided in subsection 2 of section 78 as such amounts stood on the 31st day of December next preceding, and stating that the same were on such date so ear-marked and definitely set aside.

Annual
returns of
guaranteed
funds and
securities
allocated.

(2) Every trust company receiving funds for guaranteed investment as mentioned in subsection 1 of section 80 shall make a return to the Registrar on or before the 15th day of January in each year, drawn in accordance with the form prescribed by the Registrar, showing the amount of the funds, and showing all securities, including loans on securities, and cash, including money on deposit, ear-marked and definitely set aside as provided in subsection 3 of section 80 as such amounts stood on the 31st day of December next preceding, and stating that the same were on such date so ear-marked and definitely set aside.

Semi-annual
returns by
trust
companies
as to deposits
and liquid
securities
available.

(3) Every trust company receiving deposits in the manner authorized by subsection 1 of section 78 shall make a return to the Registrar on or before the 15th days of January and July in each year, drawn in accordance with the form prescribed by the Registrar, showing the amount of the deposits and showing the amount of cash on hand and on deposit, and the amount of debentures, bonds, stock or other securities of, or guaranteed by Canada, and of, or guaranteed by, any province of Canada, less any encumbrances thereon, and the amount of bonds, debentures and other securities of any municipal corporation in Ontario or of any city in Canada, less any encumbrances thereon, and the bonds or debentures issued by any company incorporated in Canada in respect of which bonds or debentures annual or semi-annual subsidy payments sufficient to pay both principal and interest thereof are, by virtue of any Act of Canada or of a province thereof, payable by the government of Canada or province thereof to a trust company as trustee for the holders of such bonds or debentures, and the principal amount of any moneys payable to the company on demand, the payment of which is secured by the mortgage or pledge of any of the securities mentioned in this subsection as the said amounts stood at the end of the last preceding month, and including in such return all such cash and securities and loans as defined in this subsection, whether owned by the company or held by it for guaranteed investments under section 80 or 78 and stating that the same were on hand at the date mentioned in the return. 1949, c. 52, s. 142.

Semi-annual
return by
loan
company as
to deposits.

145. Every loan company receiving deposits shall make a return to the Registrar half-yearly on or before the 15th days of January and July in each year, drawn in accordance with the form prescribed by the Registrar, showing the amount of

the deposits and showing the amount of cash on hand and on deposit and the amount of debentures, bonds, stock or other securities of or guaranteed by Canada, and of or guaranteed by any province of Canada, less any encumbrances thereon, and the amount of bonds, debentures and other securities of any municipal corporation in Ontario or of any city in Canada, less any encumbrances thereon, and the bonds or debentures issued by any company incorporated in Canada in respect of which bonds or debentures annual or semi-annual subsidy payments sufficient to pay both principal and interest thereof are, by virtue of any Act of Canada or of a province thereof, payable by the government of Canada or province thereof to a trust company as trustee for the holders of such bonds or debentures, and the principal amount of any moneys payable to the company on demand, the payment of which is secured by the mortgage or pledge of any of the securities mentioned in this section as such amounts stood at the end of the last preceding month, and stating that the same were at the date mentioned in the return on hand and available for depositors. 1949, c. 52, s. 143.

146.—(1) The managing director, manager or secretary of every registered corporation shall prepare annually on the 1st day of January, or within two months thereafter, according to a printed form to be supplied on application to the Registrar, a statement of the financial condition and affairs of the corporation up to the 31st day of December next preceding. Annual statement to the Registrar.

(2) In the case of an extra-provincial corporation, the Registrar may accept the statement required by subsection 1 as for the then last fiscal year of the corporation. Extra-provincial corporation.

(3) Such annual statement shall be certified by the auditors of the corporation who shall make an affidavit thereon stating whether or not their requirements as auditors have been complied with and, Certificate of auditors on annual statement.

- (a) that they have examined the statement and that it agrees with the books of the corporation;
- (b) that after due consideration they have formed an independent opinion as to the position of the corporation;
- (c) that with their independent opinion so formed and according to the best of their information and the explanations given them, they certify that in their opinion the statement sets forth fairly and truly the state of the affairs of the corporation;

- (d) that all transactions of the corporation that have come within their notice have been within the powers of the corporation.

Affidavit of president, etc.

(4) Such annual statement shall also be proved by the affidavit of the president or vice-president and of the managing director, or some other principal officer of the corporation, and shall be accompanied by a certified copy of a resolution of the directors showing that the same had been adopted by them.

Time for filing with Registrar.

(5) Such annual statement shall be filed with the Registrar on or before the 1st day of March next ensuing.

Extending time for filing of statement.

(6) On sufficient cause shown and upon payment of the prescribed fee, the Registrar may by writing under his hand and seal of office, before or after the 1st day of March, extend the time for filing the statement.

Penalty for failure to file statement or supply information.

(7) Any corporation that does not file its statement as required by this section, or make prompt and explicit answer to any inquiries then or at any time made by the Registrar touching its contracts, finances, stock, shares, securities, obligations, by-laws or books or, if required, produce for examination its books, records, securities, accounts and vouchers shall be liable to suspension, cancellation, or non-renewal of registry, and shall be liable to a penalty of \$50 for each day of default, but not exceeding in the whole \$1,000.

Extra-provincial corporations.

(8) Where it is made to appear to the Registrar that an extra-provincial corporation does not borrow moneys in Ontario by the sale of its bonds, debentures or other securities or by accepting deposits or other moneys for investment and does not exercise in Ontario any of the powers of a trust company other than the loaning of money in Ontario, the Registrar may direct that this section shall not apply to the corporation, in which case the corporation shall make such returns and give such information as the Registrar requires.

Copy of periodical statements.

(9) The corporation shall file with the statement a certified copy of any statement furnished to shareholders during the year then ended. 1949, c. 52, s. 144.

MISCELLANEOUS

Exemption.

147. Any amount not exceeding \$300 standing to the credit of any depositor in a registered corporation shall not, while in the hands of the corporation or while in course of transmission from the corporation, be liable to demand, seizure or detention under legal process as against the depositor

or his nominee, assignee or representative, or as against any person to whom the corporation is by sections 148 and 149 authorized to pay such amount. 1949, c. 52, s. 145.

148.—(1) A person who,

- (a) has on deposit with a corporation a sum not exceeding \$600;
- (b) is the holder of debentures or guaranteed investment certificates issued by a corporation for a sum not exceeding \$600; or
- (c) has on deposit with a corporation a sum and holds debentures or guaranteed investment certificates issued by the corporation, the amounts of which in the aggregate do not exceed \$600,

Direction
as to
disposition of
deposits or
debentures
on death.

may by a writing, signed by him and deposited with the corporation, nominate any person to receive the amount thereof at his death.

(2) Subject to *The Succession Duty Act*, upon receiving an affidavit as to the death of a person who has made a nomination under subsection 1 the corporation may substitute on its books the name of the nominee in place of the name of such person or may forthwith pay to the nominee the amount due to such person. 1949, c. 52, s. 146.

Rights of
corporation.
Rev. Stat.,
c. 378.

149. Subject to *The Succession Duty Act*, where a depositor, debenture holder or holder of a guaranteed investment certificate as described in clause *a*, *b* or *c* of subsection 1 of section 148 dies without making a nomination in accordance with that section, the deposit, debenture or guaranteed investment certificate may, without letters probate or letters of administration being taken out, be paid or transferred to the person who appears to the corporation to be entitled (under the will of such depositor, debenture holder or holder of a guaranteed investment certificate or in the case of an intestacy under the law relating to devolution of property) to receive the same, upon receiving an affidavit of the death and that the person claiming is so entitled. 1949, c. 52, s. 147.

Where no
direction.

150. Where the corporation, after the death of a depositor, debenture holder or holder of a guaranteed investment certificate, has paid or transferred the deposit, debenture or guaranteed investment certificate to the person who at the time appeared to be entitled thereto, the payment or transfer shall be valid and effectual with respect to any demand from any other person as the legatee or next of kin or as the lawful

Payments
by mistake.

representative of the deceased against the corporation, but the legatee, next of kin or representative shall be entitled to recover the amount of the deposit, debenture or guaranteed investment certificate from the recipient or transferee. 1949, c. 52, s. 148.

Service of notices.

151. Delivery of any written notice or document to a corporation for any purpose of this Act, where the mode is not otherwise expressly provided, may be by letter delivered at the head or chief office of the corporation in Ontario or its chief agency therein, or sent by registered post addressed to the corporation, its manager or agent at such head or chief office or agency, or by delivering it personally to an authorized agent of the corporation. 1949, c. 52, s. 149.

Application of certain sections of Rev. Stat., c. 59.

152. Except where the provisions of this Act are inconsistent, Part XIV of *The Companies Act* shall apply, substituting for the words "Provincial Secretary" the word "Registrar". 1949, c. 52, s. 150.

OFFENCES AND PENALTIES

Refusal to make entries or exhibit same, etc.

153. Every director, manager, auditor, officer, agent, collector, servant or employee of a corporation who refuses or neglects to make any proper entry in any book of record, entry or account of the corporation, or to exhibit the same, or to allow the same to be inspected or audited, either for the general purposes of the corporation or for the purposes of this Act, and extracts to be taken therefrom, shall be guilty of an offence. 1949, c. 52, s. 151.

False statements or returns.

154.—(1) Every person who makes any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of a corporation shall be guilty of an offence and shall be liable, on conviction thereof, to imprisonment for a term of not more than five years.

Officers' liability.

(2) Every president, vice-president, director, auditor, manager or other officer of a corporation, who,

(a) prepares, signs, approves or concurs in any such account, statement, return, report or document containing such false or deceptive statement; or

(b) uses the same with intent to deceive or mislead any person,

shall be held to have wilfully made such false or deceptive statement, and shall further be responsible for all damages sustained by any person in consequence thereof. 1949, c. 52, s. 152.

155.—(1) For every contravention of this Act, which is declared to be an offence and for which no other penalty is provided, the offender shall, for the first offence, be liable to a penalty of not less than \$20 and not more than \$200, and for any subsequent offence of the same kind shall be liable to imprisonment for a term of not less than three months and not more than twelve months, or in the case of an organization, society, association, company or corporation to a penalty of not more than \$1,000.

Offences
for which
no special
penalty
provided.

(2) The information or complaint shall be laid or made in writing within one year after the commission of the offence.

Limitations
of prose-
cutions.

(3) The penalties imposed under this Act shall be recoverable under *The Summary Convictions Act* and shall belong to the Crown in right of Ontario. 1949, c. 52, s. 153.

Recovery
of penalties.
Rev. Stat.,
c. 379.

FEES

156.—(1) The fees for letters patent of incorporation under this Act shall be those set out in Schedule A.

Fees for
incor-
poration.

(2) The fees set out in Schedule B shall be payable in respect of the matters therein mentioned.

Other fees.

(3) The fees shall be payable to the Registrar.

Payment to
Registrar.

(4) Where a registered corporation proves to the satisfaction of the Registrar that it is discontinuing business in Ontario, and has given such public notice of intended discontinuance as is required, the fee for registry or renewal of registry, as the case may be, may, on the certificate of the Registrar, be commuted to one-fourth of the prescribed fee; but registry at such commuted fee shall not be granted for more than four years in all, unless for cause shown to the satisfaction of the Registrar, in which case registry may be granted year by year for an additional number of years.

Commuta-
tion on
proposed
discontinu-
ance of
business.

(5) In the case of an application or other document or instrument to be filed, examined or deposited, the fee shall be paid before the application or other document or instrument is dealt with, and in the case of registry or certificates of registry the fee shall be paid before the corporation is registered. 1949, c. 52, s. 154.

Time of
payment.

SCHEDULE A

(Section 156 (1))

Fee for Letters Patent of Incorporation:

For a corporation with an authorized capital stock of,

(a) \$300,000 but less than \$500,000.....	\$200 00
(b) \$500,000 but less than \$1,000,000.....	250 00
(c) \$1,000,000.....	350 00
and \$25 for each additional \$100,000 or part thereof.	
(d) Supplementary Letters Patent.....	50 00

1949, c. 52, Sched. A.

SCHEDULE B

(Section 156 (2))

1. Application for initial registry (s. 115).....	\$5 00
2. Extension of time not exceeding seven days, or any renewal thereof not exceeding seven days, for filing annual statement, application for renewal of registry, or any other documents or information required under the authority of this Act, provided that the Registrar may grant relief from the payment of this fee in any case in which he thinks for reasons appearing to him to be sufficient, that it should not be imposed.....	10 00
3. Filing power of attorney in case of corporations mentioned in section 116.....	5 00
4. Filing new power or change of attorney (s. 116).....	5 00
5. Initial registry Loan or Loaning Land Corporations.....	100 00
6. Initial registry Trust Companies.....	150 00
7. Certificate of renewed registry (s. 117):	
(a) Where the assets of the corporation amount to not more than \$250,000.....	35 00
(b) Where the assets of the corporation exceed \$250,000 but do not exceed \$500,000.....	50 00
(c) Where the assets of the corporation exceed \$500,000 but do not exceed \$1,000,000.....	75 00
(d) Where the assets of the corporation exceed \$1,000,000 but do not exceed \$1,500,000.....	100 00
(e) Where the assets of the corporation exceed \$1,500,000 but do not exceed \$2,000,000.....	125 00
(f) Where the assets of the corporation exceed \$2,000,000 but do not exceed \$2,500,000.....	150 00
(g) Where the assets of the corporation exceed \$2,500,000 but do not exceed \$3,000,000.....	175 00
(h) Where the assets of the corporation exceed \$3,000,000 but do not exceed \$5,000,000.....	200 00
(i) Where the assets of the corporation exceed \$5,000,000 but do not exceed \$10,000,000.....	250 00
(j) Where the assets of the corporation exceed \$10,000,000.....	300 00
(k) Minimum under section 156 (4).....	35 00

For purposes of this item, capital stock uncalled shall not be deemed an asset.

8. Interim certificate of registry or extension of certificate (s. 117).....	5 00
------------------------------------------------------------------------------	------

9. Revivor of registry after suspension (s. 117):	
For a corporation within item 7 (a).....	\$10 00
For a corporation within item 7 (b).....	15 00
For a corporation within item 7 (c).....	20 00
For a corporation within item 7 (d).....	25 00
For a corporation within item 7 (e, f and g).....	30 00
For other corporations.....	35 00
10. Change of corporate name (s. 118).....	25 00
11. Change of head office (s. 118).....	25 00
12. Filing annual statement (s. 146).....	5 00
13. Filing new by-laws or amendments thereto after initial registry (s. 29).....	2 00
14. Application for increase, decrease, conversion or alteration of capital stock or shares or declaration or alteration of powers.....	10 00
(a) Certificate of decrease, conversion or alteration of capital stock or shares or declaration or alteration of powers.....	150 00
(b) Order in Council increasing capital stock:	
i. \$300,000 but less than \$500,000.....	200 00
ii. \$500,000 but less than \$1,000,000.....	250 00
iii. \$1,000,000.....	350 00
and \$25 for each additional \$100,000 or part thereof	
iv. Supplementary letters patent.....	50 00
15. Application for increase in borrowing powers under section 73 (2).....	25 00
(a) Order in Council.....	200 00
16. Copy of decision of Registrar, per folio of 100 words.....	10
Also for certificate of Registrar.....	1 00
17. Certified copy of entry on register or of certificate.....	1 00
18. Copies of or extracts from documents filed with Registrar, per folio of 100 words.....	10
Also for certificate of Registrar.....	1 00
19. Examining and passing upon applications or documents under sections 95 to 103.....	25 00
Order in Council and certificate.....	200 00
20. Examining and passing upon applications or documents under sections 26 and 27 of <i>The Trustee Act</i> (Rev. Stat., c. 400).....	25 00
Order in Council.....	100 00
21. Examining and passing upon applications or documents under section 81.....	25 00
Order in Council.....	100 00

(1) 0

(2) 1

(3) 2

(4) 3

(5) 4

(6) 5

(7) 6

(8) 7

(9) 8

(10) 9

(11) 10

(12) 11

(13) 12

(14) 13

(15) 14

(16) 15

(17) 16

(18) 17

(19) 18

(20) 19

CHAPTER 215

The Local Improvement Act

INTERPRETATION

1. In this Act,Interpre-
tation.

- (a) "Board" means Ontario Municipal Board; *New*.
- (b) "bridge" includes a viaduct, a culvert, a subway and an embankment, and a pavement on a bridge;
- (c) "clerk" means the clerk of the municipality and includes any officer or person authorized or required by the council to perform any duty which under this Act is to be or may be performed by the clerk;
- (d) "constructing" and "construction" include reconstructing and reconstruction, wholly or in part, when the lifetime of the work has expired;
- (e) "corporation" means the corporation of a municipality;
- (f) "corporation's portion of the cost" means that part of the proportion of the cost of a work which is not to be specially assessed, but is payable by the corporation;
- (g) "council" means the council of the corporation of a municipality;
- (h) "county" includes district;
- (i) "curbing" includes a curbing of any material in or along a street, whether constructed in connection with or apart from the laying down of a pavement or sidewalk, or with or without a projection for the purpose of a gutter;
- (j) "engineer" includes an officer or person authorized or required by the council to perform any duty which under this Act is to be or may be performed by an engineer;
- (k) "frontage", when used in reference to a lot abutting directly on a work, means that side or limit of the lot which abuts directly on the work;

Rev. Stat.,
c. 24.

- (l) "judge of the county court" means the judge or a junior judge of a county or district court;
- (m) "lifetime", as applied or applicable to a work, means the lifetime of the work as estimated by the engineer, or in case of an appeal as finally determined by the court of revision or the judge, as the case may be;
- (n) "lot" means a subdivision or a parcel of land which by *The Assessment Act* is required to be separately assessed, and "lots" means more than one lot as so defined;
- (o) "municipality" includes a union of townships, a municipality composed of more than one township, a township, a city, a town and a village, but not a county;
- (p) "owner" and "owners" mean respectively the person or persons appearing by the last revised assessment roll of the municipality to be the owner or owners of land, and, except in the case of a township, include a tenant for years, the unexpired term of whose tenancy including any renewal thereof to which he is entitled extends for not less than the period during which the special assessment for the work is to be made, if by the terms of his tenancy he would be liable for the payment of the special assessment for the work, but do not include a person who is, or is assessed as, owner, where there is a tenant for years of the land, who is an owner within the meaning of this clause;
- (q) "owners' portion of the cost" means that part or portion of the cost of a work which is to be specially assessed upon the land abutting directly on the work or upon land immediately benefited by the work;
- (r) "pavement" includes any description of pavement or roadway;
- (s) "paving" includes macadamizing, planking, and the laying down or construction of any description of pavement or roadway and the construction of a curbing;
- (t) "publication" and "published" mean insertion in a newspaper published in the municipality, if there is a newspaper published therein, or, if there is none, then in a newspaper published in the county in which the municipality is situate;
- (u) "sewer" includes a common sewer and a drain and two or more sewers connected as a system of sewers;

- (v) "sidewalk" includes a footway and a street crossing;
- (w) "specially assessed" means specially rated for or charged with part of the cost of a work;
- (x) "street" includes a lane, an alley, a park, a square, a public drive and a public place, or a part of any of them;
- (y) "value" means assessed value, exclusive of buildings, according to the last revised assessment roll of the municipality;
- (z) "watermain" includes two or more watermains connected in a system of waterworks and hydrants;
- (za) "work" means a work or service which may be undertaken as a local improvement;
- (zb) "work undertaken" means a work which is undertaken as a local improvement. R.S.O. 1937, c. 269, s. 1.

WORKS WHICH MAY BE UNDERTAKEN AS LOCAL IMPROVEMENTS

2.—(1) A work of any of the characters or descriptions hereinafter mentioned may be undertaken by the council of a corporation as a local improvement: Works which may be effected as local improvements.

- (a) opening, widening, extending, grading, altering the grade of, diverting or improving a street;
- (b) opening or establishing a new street;
- (c) constructing a bridge as part of a street;
- (d) constructing, enlarging or extending a sewer, including a sewer on each side or on one side only of a street;
- (e) constructing, enlarging or extending a watermain, including a main on each side or on one side only of a street;
- (f) paving a street;
- (g) constructing a curbing or a sidewalk in, upon or along a street;
- (h) constructing or maintaining a boulevard where a part of a street has been set apart for the purposes of a boulevard;

- (i) sodding any part of and planting, maintaining and caring for trees, shrubs and plants upon and in a street;
- (j) the extension of a system of water, gas, light, heat or power works owned by the corporation, including all such works as may be necessary for supplying water, gas, light, including street lighting, heat or power, to the owners of land, for whose benefit the extension is provided;
- (k) in a township where works have been constructed and erected for the supply of electrical power to owners, for constructing and erecting in connection with such works such further works, plant, appliances and equipment as may be necessary for street lighting;
- (l) acquiring, establishing, laying out and improving a park or square not having a greater area than two acres, or a public drive;
- (m) constructing retaining walls, dykes, breakwaters, groynes, cribs and other shore protection works along the banks of rivers, streams or creeks or along the shores of lakes;
- (n) in the case of cities and towns only, constructing and erecting on petition only, on any street or part of a street, equipment, plant and works for the purpose of supplying electric light or power, including standards and underground conduits and wires, to the extent to which the cost of the same exceeds the cost of the equipment, plant and works which would otherwise be provided at the expense of the corporation at large;
- (o) constructing a subway under a railway;
- (p) subject to section 25, for re-surfacing with asphalt or other suitable material, a pavement having a foundation which in the opinion of the engineer is sufficient therefor, whether or not the lifetime of the pavement has expired, and when any work undertaken under this clause is such as might entitle it to a provincial grant, the approval of the Department of Highways shall be first had and obtained with respect to the suitability of the foundation;
- (q) widening, on petition only, a pavement on a street;
- (r) subject to section 26, in a city having a population of over 300,000, widening a pavement on a street without a petition.

(2) Nothing in this section shall extend or apply to a work of ordinary repair or maintenance. R.S.O. 1937, c. 269, s. 2.

3.—(1) Where the work is the construction of a pavement or watermain, the council, before proceeding with the work, may construct all works necessary for surface drainage in connection therewith and may make all necessary private drain connections from the main sewer to the street line on either or both sides, and may also lay all necessary water service pipes and stop cocks and make all necessary alterations in the same, and where gas works are owned by the corporation the council may lay all necessary gas mains, service pipes and stop cocks and make all necessary alterations in the same, and where the work is the construction of a sewer the council may make all necessary private branch drains and connections to the street line on either or both sides; but the cost of a water or gas service pipe or stop cock and any alteration of the same and the cost of a private branch drain and connection shall be specially assessed only upon the particular lot to serve which it was constructed or effected by an equal special rate per foot of the frontage of such lot.

Works which may be undertaken in connection with a pavement, watermain or sewer.

(2) Where the work is the construction of a pavement, the council may from time to time during the progress of the work, upon the written request of the owner of the lot to be served, provide for the construction, as part of the pavement, of an approach of such width and character as the council may determine from the boundary line of the pavement to the street line, so as to form an approach to a particular lot, and the cost of such approach shall be specially assessed upon the particular lot so served.

Construction of approach to lot.

(3) The works mentioned in subsection 1 shall be deemed part of the work of construction of the pavement, sewer or watermain in all respects except as to the manner in which the cost of them is to be specially assessed as provided by that subsection.

To be part of work of construction.

(4) The amount to be assessed against each lot in respect of a private drain connection, water service pipe or gas service pipe shall be the cost thereof from the centre of the street to the street line, whether or not the sewer or water or gas main is laid in the centre of the street, but this subsection shall not apply to private drain connections where a sewer is constructed on each side of a street. R.S.O. 1937, c. 269, s. 3.

How to be assessed.

4.—(1) Where a sewer, water main or gas main has been or is hereafter constructed, the council, by a vote of two-thirds of all the members thereof at any general or special meeting, may undertake the construction of private drain connections, water service pipes or gas service pipes from the

Construction of private drain connections without petition.

sewer, water main or gas main to the street line on either or both sides as a local improvement without any petition therefor, and the cost of each private drain connection, water service pipe or gas service pipe shall be specially assessed upon the particular lot for or in connection with which it is constructed by an equal special rate per foot of the frontage of the lot, and the owners of the land shall not have the right of petition provided for by section 12, and the provisions of subsection 4 of section 3 shall apply.

(2) Where a private drain connection, gas or water service pipe has been constructed by a municipality at the request of the owner of land and the council has not proceeded under subsection 1, the amount due may be inserted in the collector's roll and be collected in the same manner as taxes. R.S.O. 1937, c. 269, s. 4.

Purchase by township of works already constructed.

Rev. Stat., c. 243.

5. In a township, town or village in unorganized territory where the owners of land have constructed a work which might have been undertaken as a local improvement, the council, upon the petition of three-fourths in number of the owners of the land to be immediately benefited by the acquisition of the work, representing at least two-thirds of the value of such land, may acquire the work at a price agreed upon or to be determined by arbitration under *The Municipal Act*, and the purchase money may be provided by the council and may be assessed in like manner as if the work were a work which the council were undertaking as a local improvement, and all the provisions of this Act shall apply as if the council were undertaking the work so acquired as a local improvement. R.S.O. 1937, c. 269, s. 5.

Approval of Board required in the case of certain works.

6.—(1) Where the work is the opening, widening or extension of a street or the construction of a bridge, and the cost of the work as estimated by the engineer will exceed \$50,000, any person whose land is to be specially assessed may, within 10 days after notice to him of the intention of the council to undertake the work, give notice that he objects to the work being undertaken upon the ground that it is a work for the general benefit of the municipality or of a section or district thereof, and if such notice is given the work shall not be undertaken without the approval of the Board.

Approval may be withheld.

(2) If the Board, after notice to the corporation and to all persons interested and after hearing such of them as request to be heard, determines that for the reasons mentioned in subsection 1, or either of them, it is proper to do so, the Board may withhold its approval.

(3) If the Board determines that the cost of the work should be borne by the corporation or by the owners of the land situate within a section or district of the municipality, the Board may make an order so declaring, and in that event the council may, notwithstanding the provisions of this Act, or of any by-law passed under the authority of this Act, undertake and proceed with the work at the cost of the corporation or of the section or district thereof mentioned in the order, as the case may be. Apportionment of cost of work.

(4) The Board, instead of making an order under subsection 3, may direct that if the work is undertaken such part of the cost of it as the Board may deem just shall be charged upon the lots abutting directly upon the work, in accordance with the provisions of this Act and that the residue of it shall be borne by the corporation or partly by the corporation and partly by a section or district of the municipality in such proportions as the Board may direct, and if the council undertakes the work, it shall conform with the directions of the order. Or may direct the cost to be charged upon the abutting lots.

(5) The special assessment upon the lots shall not be made by the Board, but by the council, in accordance with the provisions of this Act. Special assessments by council. R.S.O. 1937, c. 269, s. 6.

PROCEDURE FOR UNDERTAKING WORK

7.—(1) A by-law may be passed for undertaking a work as a local improvement, Methods of undertaking works.

(a) on petition;

(b) without petition, on the initiative of the council, hereinafter called the initiative plan, except in the case of a park or square or public drive mentioned in clause 1 of subsection 1 of section 2;

(c) on sanitary grounds, as mentioned in section 9; or

(d) without petition in the case mentioned in sections 4 and 8.

(2) Instead of passing separate by-laws for each work, the council may pass one by-law in respect of several works. One by-law may include several works. R.S.O. 1937, c. 269, s. 7.

8.—(1) Where the council determines and by by-law or resolution passed at any meeting by a vote of two-thirds of all the members thereof declares it is desirable that the construction of a curbing, pavement, sidewalk, sewer, watermain or bridge, or the opening, widening, extending, grading, altering the grade of, diverting or improving a street, or the extension Local improvements with approval of Board.

of a system of water works, or of private drain connections or water service pipes under section 4, should be undertaken as a local improvement, the council may with the approval of the Board pass a by-law to undertake the work.

Petition not
requisite.

(2) Where the undertaking of the work is approved by the Board no petition required by section 11 shall be necessary and the owners shall not have the right of petition provided by section 12.

Notice of
application
to Board.

(3) Where it is intended to proceed under this section the council shall not be deemed to proceed on the initiative plan but there shall be published at least once a week for two weeks a notice of intention (Form 2) to apply to the Board for approval of the work being undertaken and any owner may within 21 days after the first publication of such notice file with the Board his objection to the work being undertaken.

Further
notices.

(4) The Board may direct such further or other notice or notices (Form 2) or otherwise, to be given by the council, and the Board may make such order with respect to the work, as may seem proper.

Work not
to proceed
until
approval
given.

(5) The work shall not be undertaken until the approval of the Board to the passing of the by-law therefor has been obtained.

What notice
may
include.

(6) The notice (Form 2) when published may relate to and include any number of different works. R.S.O. 1937, c. 269, s. 8.

Construction
of sewer on
recom-
mendation
of health
authority.

9. Where the council, upon the recommendation of the Minister of Health or of the local board of health of the municipality, determines and, by by-law passed at a regular or special meeting of the council by vote of two-thirds of all the members thereof, declares that the construction, enlargement or extension of a sewer or watermain or of private drain connections or water service pipes under section 4 as a local improvement is necessary or desirable in the public interest on sanitary grounds, the council may undertake the work without petition, and the owners of the land shall not have the right of petition provided for by section 12. R.S.O. 1937, c. 269, s. 9.

Notice of
intention.

10.—(1) Where it is intended to proceed under section 9 the council shall not be deemed to proceed on the initiative plan, but, before passing the by-law for undertaking the work, shall cause notice of its intention (Form 1) to be published, and such notice may relate to and include any number of different works,

(2) Where the council proceeds with any local improvement under subsection 1, a majority of the owners representing at least one-half the value of the lots which are to be specially assessed therefor, being dissatisfied with the local improvement or with the manner in which it has been undertaken, may apply by petition to the Board for relief, and the Board may thereupon investigate the complaint and make such order with respect to the local improvement as may seem proper, and after notice to the clerk of the municipality of the application and pending its determination by the Board, the council shall not proceed with the local improvement work.

Objection
to con-
struction.

(3) The sufficiency of the petition shall be determined in the manner provided by section 15.

Sufficiency
of petition.

(4) The petition shall be deposited with the secretary of the Board within 21 days after the publication of notice of the council's intention to undertake the work.

Filing of
petition.

(5) The by-law for undertaking the work shall not be passed until the expiry of the said 21 days. R.S.O. 1937, c. 269, s. 10.

Time for
passing
by-law.

11. The petition for a work shall be signed by at least two-thirds in number of the owners representing at least one-half of the value of the lots liable to be specially assessed, provided that where a petition proposes that any lot be totally exempted from special assessment under section 29, such lot and the owner thereof shall be excluded from computation in ascertaining whether the petition is sufficiently signed. R.S.O. 1937, c. 269, s. 11.

Number of
signatures
to petition
required.

12.—(1) Where the council proceeds on the initiative plan, notice of the intention of the council to undertake the work (Form 3) shall be given by publication of the notice and by service of it upon the owners of the lots liable to be specially assessed, and unless within one month after the first publication of the notice a majority of the owners, representing at least one-half of the value of the lots which are liable to be specially assessed, petition the council not to proceed with it the work may be undertaken as a local improvement.

Notice of
intention
under
initiative
plan.

(2) The notice shall be sufficient if it designates by a general description the work to be undertaken and the street or place whereon or wherein, and the points between which the work is to be done, and the number of the instalments by which the special assessment is to be payable.

Contents
of notice.

(3) The notice may relate to and include any number of different works.

May cover
different
works.

Manner of
service.

- (4) The notice may be served upon the owner,
- (a) personally; or
 - (b) by leaving it at his place of business or of residence if within the municipality; or
 - (c) by mailing it at a post office addressed to the owner at his actual place of business or of residence, if known, or at his place of business or residence as set forth in the last revised assessment roll of the municipality; or
 - (d) if the place of business and of residence of the owner are not known, by leaving the notice with a grown-up person on the lot of the owner which is liable to be specially assessed, if there is a grown-up person residing thereon.

Where
residence,
etc.,
unknown.

- (5) If the place of business and of residence of the owner are unknown, and there is no grown-up person residing on the lot of the owner which is liable to be specially assessed, service upon the owner shall not be requisite.

Proof of
publication
and service.

- (6) Publication and service of the notice may be proved by affidavit or statutory declaration, which before the passing of the by-law by which the special assessment is made to defray the cost of the work, shall be *prima facie* evidence, and after the passing of the by-law shall be conclusive evidence of the matters set forth therein. R.S.O. 1937, c. 269, s. 12.

Effect of
petition
against
work.

13.—(1) Where the council has proceeded on the initiative plan and has been prevented from undertaking a work by reason of a petition having been presented under section 12, the council shall not proceed on the initiative plan with regard to the same work for a period of two years after the presentation of the petition; provided that in a municipality in which a by-law passed under section 66 is in force the prohibition contained in this section shall not prevent the council from again proceeding on the initiative plan with regard to such work if it is of a different kind or description from or less expensive than that originally proposed to be undertaken.

Powers
conferred by
section 8
not affected.

- (2) Nothing in this section shall prevent the council from exercising the power conferred by section 8. R.S.O. 1937, c. 269, s. 13.

Lot of
petitioner
to be
described.

14. There shall be set out opposite to every signature to the petition for or against a work a description of the lot of which the petitioner is the owner by its number or such other description as will enable the clerk to identify it. R.S.O. 1937, c. 269, s. 14.

15.—(1) The sufficiency of a petition for or against a work shall be determined by the clerk, and his determination shall be evidenced by his certificate and when so evidenced shall be final and conclusive. Clerk to determine sufficiency of petition.

(2) Where the sufficiency of a petition has been determined by the clerk it shall be deemed to have been and to be a sufficient petition notwithstanding that changes may be made by the court of revision or by the judge in the lots to be specially assessed which have the effect of increasing or reducing the number of the lots. What owners to be counted.

(3) When it is necessary to determine the value of any lot and the value cannot be ascertained from the proper assessment roll by reason of the lot not having been separately assessed, or for any other reason, the clerk shall fix and determine the value of the lot and the value thereof as so fixed and determined shall be deemed for the purpose of this Act to be the assessed value thereof, and his determination shall be final and conclusive. Determining value of lots.

(4) Where a person who is, but does not appear by the last revised assessment roll of the municipality to be, the owner of land is a petitioner, he shall be deemed an owner if his ownership is proved to the satisfaction of the clerk, and if the person who appears by the assessment roll to be the owner is a petitioner his name shall be disregarded in determining the sufficiency of the petition. Owner whose name is not on roll may petition.

(5) Where two or more persons are jointly assessed for a lot, in determining the sufficiency of a petition, Case of joint owners.

(a) they shall be reckoned as one owner only;

(b) they shall not be entitled to petition unless a majority of them concur and the signatures of any of them, unless the petition is signed by the majority, shall be disregarded in determining the sufficiency of the petition.

(6) The clerk, for the purpose of any inquiry pending before him under this section may cause witnesses to be summoned and to be examined upon oath, and any person interested in the inquiry may, for the purpose of procuring the attendance of a witness, cause a subpoena to be issued out of the county court of the county in which the municipality lies. Witnesses.

(7) A witness, if a resident of the municipality, shall be bound to attend without payment of any fees or conduct money, and if not a resident of the municipality shall be entitled to fees and conduct money according to the county court scale. Witness fees.

Complaints to be investigated by county judge.

(8) Where any person complains to the clerk that his signature to the petition was obtained by fraud, misrepresentation or duress the complaint shall be investigated and determined by a judge of the county court, and the clerk shall delay certifying until he has received the finding or report of the judge upon the complaint, and in determining as to the sufficiency of the petition the clerk shall give effect to such finding or report. R.S.O. 1937, c. 269, s. 15.

Petitions to be lodged with clerk.

16. A petition for or against the undertaking of a work shall be lodged with the clerk, and shall be deemed to be presented to the council when it is so lodged. R.S.O. 1937, c. 269, s. 16.

Withdrawal of name from petition.

17. No person shall have the right to withdraw his name from, and no name shall be added to, a petition after the clerk has certified as to its sufficiency. R.S.O. 1937, c. 269, s. 17.

Power to undertake part of work only.

18. Where a by-law has been heretofore or is hereafter passed for undertaking any work as a local improvement and the council deems it inadvisable or impracticable to complete the work, the council may, by by-law, amend such by-law and provide for the carrying out of part only of the work mentioned therein or for the substitution in whole or in part of another kind or character of work of the same class as that undertaken in such by-law, but all the provisions of this Act shall apply to such partial work as if it had been originally undertaken as one entire work or to such substituted work as if it had been the work originally undertaken, but the amending by-law shall take effect only on being approved by the Board. R.S.O., 1937, c. 269, s. 18.

Amendments to by-laws respecting highways.

19. After passing a by-law for establishing, extending, widening or diverting a highway, and before completion of the work, the council may apply to the Board for leave to pass an amending by-law providing for a deviation in the course or location of the highway as defined in the original by-law, and the Board may make an order approving of and validating an amending by-law accordingly on such terms and conditions and after such hearing as it may consider proper, and subject to the terms of the order the provisions of this Act shall apply to such altered work as if it had been provided for in the original by-law. R.S.O. 1937, c. 269, s. 19.

HOW COST OF WORK TO BE BORNE

Frontage rate.

20.—(1) Except as otherwise expressly provided in this Act, the entire cost of a work undertaken shall be specially assessed upon the lots abutting directly on the work, accord-

ing to the extent of their respective frontages thereon, by an equal special rate per foot of such frontage sufficient to defray such cost.

(2) The following may be included in the cost of the work: Items which may be included in cost.

- (a) engineering expenses;
- (b) cost of advertising and service of notices;
- (c) interest on temporary loans;
- (d) compensation for lands taken for the purposes of the work or injuriously affected by it and the expenses incurred by the corporation in connection with determining such compensation;
- (e) the estimated cost of the issue and sale of debentures and any discount allowed to the purchasers of them.

(3) Where the work is the widening of a pavement on a street the lots on each side of the street shall be deemed to abut directly on the work. Case of widening pavement. R.S.O. 1937, c. 269, s. 20.

21.—(1) Where a municipality receives a contribution in cash to be applied towards the cost of any work, the amount of the contribution shall be deducted from the total cost of the work and the balance shall for all purposes be deemed the actual cost of the work. Deduction of contributions from cost.

(2) If the contribution is by way of an annuity, it shall be capitalized and the capitalized value shall be deducted as aforesaid but the municipality shall nevertheless borrow the full amount of the cost of the work and shall specially assess against the owners of lots their share of the cost ascertained after making the deduction as aforesaid, and the balance of the total cost shall be the corporation's portion of the cost, and the annuity shall be applied in reduction of the annual rate levied to meet the corporation's portion of the cost. Contribution by way of annuity, how treated. R.S.O. 1937, c. 269, s. 21.

22.—(1) Where a contractor is employed to construct a pavement or sidewalk, and the council has required him to guarantee that he will so construct it that it shall, for a period not exceeding 10 years, remain in good condition and suitable for safe and comfortable travel, and that he will, when required, make good any imperfections therein due to materials, workmanship or construction, in ascertaining the cost of the work no deduction shall be made from the sum paid to the contractor by reason of such guarantee having been required. Guarantee of work.

Assessment
of allowance
to make
good imper-
fections.

(2) In all municipalities where such guarantee is required where any local improvement is undertaken by the corporation and constructed by day labour, the corporation may assess as part of the cost thereof a reasonable allowance to make good any imperfections therein due to materials, workmanship or construction during the lifetime thereof as fixed by the court of revision, the amount of such allowance to be subject to revision by the court of revision. R.S.O. 1937, c. 269, s. 22.

Corpora-
tion's
portion of
cost.

23. There shall be included in the corporation's portion of the cost,

- (a) at least one-third of the cost of a sewer having a sectional area of more than four feet; and
- (b) the entire cost of all hydrants constructed in connection with a watermain and the entire cost of all culverts, catch basins and other works which are provided for surface drainage and which are incidental to the construction of the sewer or pavement; and
- (c) so much of the cost of a work as is incurred at street intersections. R.S.O. 1937, c. 269, s. 23.

Apportion-
ment of cost
of sewers.

24.—(1) Where the work is the construction of a sewer or watermain the council may in the by-law for undertaking the work, passed by a vote of three-fourths of all the members, provide that a certain sum per foot frontage shall be specially assessed upon the land abutting directly on the work and that the remainder of the cost of such sewer or watermain shall be borne by the corporation.

Part to be
borne by
corporation.

(2) The part of the cost to be borne by the corporation shall not be less than that which, under section 23, is to be included in the corporation's portion of the cost. R.S.O. 1937, c. 269, s. 24.

Assump-
tion by corpora-
tion of
special
assessments
in certain
cases.

25. Where the work undertaken is the resurfacing of a pavement as provided by clause *p* of subsection 1 of section 2, the corporation shall assume and pay the special assessments therefor charged against the lots fronting or abutting on the work until the expiration of the period within which such lots are specially assessed for the then existing pavement. R.S.O. 1937, c. 269, s. 25.

Widening
costs in
certain
cases.

26.—(1) Where, in a city of over 300,000 population, the work to be undertaken is the widening of a pavement on a street without a petition, the by-law for undertaking the work shall provide that in addition to the corporation's portion of the cost including the portions otherwise provided for in this

Act there shall also be included in such portion so much of the cost of the work as is incurred in the construction or reconstruction of the pavement to a width greater than the width of the pavement then existing on the street.

(2) The work shall not be undertaken until the approval of the Board to the passing of the by-law therefor has been obtained, and the provisions of section 8 shall, *mutatis mutandis*, apply thereto. R.S.O. 1937, c. 269, s. 26. Approval of Board requisite.

27.—(1) Subject to subsection 3, the council of the corporation of a municipality in which there is not in force a by-law passed under section 66 applicable to the work may, by by-law passed at any general or special meeting by a vote of three-fourths of all the members of the council, provide that such part as to the council seems proper of the cost of every granolithic, stone, cement, asphalt or brick sidewalk, or of every pavement or curbing or of works, plant, appliances and equipment for street lighting constructed as a local improvement which otherwise would be chargeable upon the land abutting directly on the work, shall be paid by the corporation. R.S.O. 1937, c. 269, s. 27 (1); 1941, c. 27, s. 1. Corporation may assume part of cost of sidewalk or pavement.

(2) Such by-law shall not be repealed except by vote of three-fourths of all the members of the council. Repeal of by-law.

(3) The council by by-law passed at any general or special meeting by a vote of three-fourths of all the members of the council and approved of by the Board may provide that the corporation shall assume a larger share of the cost of a certain named work undertaken on a certain named street than is provided in the by-law passed under subsection 1, with reference to works of the same class or where no by-law has been passed under subsection 1 that the corporation shall assume a stated part of the owners' portion of the cost of any certain named work of any one of the classes set out in subsection 1. R.S.O. 1937, c. 269, s. 27 (2, 3). Assumption of larger share of certain named work.

28.—(1) In the case of corner lots and triangular or irregularly shaped lots situate at the junction or intersection of streets, a reduction shall be made in the special assessment which otherwise would be chargeable thereon sufficient, having regard to the situation, value and superficial area of such lots as compared with the other lots, to adjust the assessment on a fair and equitable basis. Reduction of assessment of corner lots, etc.

(2) Where a lot is for any reason wholly or in part unfit for building purposes a reduction shall also be made in the special assessment which otherwise would be chargeable if lots unfit for building purposes.

thereon, sufficient to adjust its assessment as compared with that of the lots fit for building purposes on a fair and equitable basis. R.S.O. 1937, c. 269, s. 28 (1, 2).

Of lots
with two
limits
abutting
on works.

(3) Subject to section 29, where a lot, other than a corner lot, has two limits that abut on works and the size or nature of the lot is such that any or all of the works are not required, a reduction in respect of the works that are not required, so long as they are not required, shall also be made in the special assessment that would otherwise be chargeable thereon, sufficient to adjust its assessment on a fair and equitable basis. 1946, c. 49, s. 1.

How
reduction
to be made.

(4) The reduction shall be made by deducting from the total frontage of the lot liable to the special assessment so much thereof as is sufficient to make the proper reduction, but the whole of the lot shall be charged with the special assessment as so reduced.

Reduction
to be
borne by
corporation.

(5) The amount of any reduction made in the assessment of any lot under the provisions of this section shall not be chargeable upon the lots liable to be specially assessed, but shall be paid by the corporation. R.S.O. 1937, c. 269, s. 28 (3, 4).

Assessment
for opening
lane.

29.—(1) Where the work is the opening, widening, extension, grading or paving of a lane, and the council is of opinion that any lot abutting on the work is not benefited by the work, or is not benefited thereby to the same extent as other abutting lots, the council may, in the by-law for undertaking the work, exempt such lot or make a reduction in the special assessment which would otherwise be chargeable thereon by deducting from the total frontage of the lot liable to special assessment so much thereof as is sufficient to make the proper reduction.

Assessment
of cost of
work in
such case.

(2) Where such lot is exempted the amount of the special assessment which would otherwise be chargeable thereon shall be specially assessed against all the other abutting lots, and where a reduction is made the entire cost of the work shall be specially assessed as if it were the cost in respect to the reduced frontage but the whole of the lot granted the reduction shall be charged with the special assessment as so reduced.

Board's
approval.

(3) None of the works mentioned in subsection 1 shall be proceeded with until the by-law for undertaking the work is approved by the Board and no exemptions or reductions mentioned in subsection 1 shall be made other than those provided for in a by-law approved by the Board. R.S.O. 1937, c. 269, s. 29.

30.—(1) Subject to subsection 2, where the work undertaken is a sidewalk or curbing or a sewer or watermain constructed on one side of a street to serve only the lots on that side, only the land abutting on that side of the street upon which the work is constructed shall be specially assessed. Assessment of cost of certain works.

(2) On petition, sufficiently signed, of the owners on both sides of a street in a township praying that a sidewalk be constructed on one side only of the street and that a certain portion not exceeding one-third of the owners' share of the cost be assessed on the lots fronting or abutting on the other side of the street the council may specially assess the lands on the other side of the street in conformity with the petition and if a sidewalk is thereafter constructed on the other side of the street the owners' portion of the cost shall be specially assessed in like manner. R.S.O. 1937, c. 269, s. 30. Assessment of cost of sidewalks in townships on petition.

31.—(1) Where the work is the acquisition, establishment, laying out and improving of a park or square or the construction of a bridge or the construction of a sewer or watermain of a larger capacity than is required for the purpose of the abutting land, or the opening, widening, extending, grading, altering the grade of, diverting or improving a street, or the construction of any work mentioned in clause *m* of subsection 1 of section 2, and the council is of opinion that for any reason it would be inequitable to charge the cost of the work on the land abutting directly thereon, the council may, in the by-law for undertaking the work passed by the vote of three-fourths of all the members, provide for the payment by the corporation of such part of the cost as to the council may seem just, and so much of the residue thereof as may seem just may be specially assessed upon the land abutting directly on the work, and so much of such residue as may seem just on such other land as is immediately benefited by the work. Apportionment of cost of a bridge, the opening of a street, etc.

(2) In the cases provided for by subsection 1, that part of the cost of the work for which the abutting land is to be specially assessed shall be assessed thereon in the manner provided by section 20, and that part of the cost for which land not abutting directly on the work is to be specially assessed shall be assessed thereon in the manner provided by sections 36 and 37. R.S.O. 1937, c. 269, s. 31. Method of assessment.

32. Where the land abutting directly on any work undertaken as a local improvement is a right-of-way for a railway or for the transmission of electrical power the council may exercise the powers conferred by subsection 1 of section 31 with respect to that part of the cost which would otherwise be specially assessed against such right-of-way. R.S.O. 1937, c. 269, s. 32. Assessment of right-of-way of railway, etc.

Assessment
of cost of
outlet for
sewage.

33. Where the work is the construction of a sewer and it is necessary to construct an outlet for the sewage, and the lands fronting or abutting on or through which the outlet is constructed are not benefited or served thereby, the cost of the outlet shall be deemed to be a part of the cost of the sewer and shall not be specially assessed against the lands fronting or abutting on the outlet or through which the outlet is constructed. R.S.O. 1937, c. 269, s. 33.

Assessment
of cost of
outlet or
pumping
works.

34. Where the work is the construction of a sewer which is an outlet for sewage from lands not abutting directly upon the work or is the installation and construction of sewage pumping works, force mains, siphons and other pumping facilities necessary for a sewer or sewer system in carrying away sewage from lands not abutting directly upon the works, the council may, in the by-law for undertaking the work passed by a vote of three-fourths of all the members, provide for the payment by the corporation of such part of the cost of the work as to the council may seem just, and that the residue thereof shall be specially assessed on the lands not abutting on the work but immediately benefited thereby in the manner provided by sections 36 and 37. 1949, c. 53, s. 1.

Compensa-
tion by
reducing
assessment.

35.—(1) Where the work of acquiring, establishing, opening, widening, extending or diverting a street involves the taking of a portion of a lot abutting on the work, or of one or more of a number of lots or contiguous lots owned by the same person, the council may agree with the owner that in consideration of the dedication or gift of the land required to be taken or a release of or reduction in the owner's claim for compensation, the remainder of his lot or his remaining lots as the case may be shall be charged with no part or a specified portion or proportion only of the special assessment which would otherwise be chargeable thereon in respect of the cost of the work, and the special assessment roll shall be prepared in conformity with such agreement notwithstanding anything to the contrary in this Act.

Appeal.

(2) An appeal shall lie to the court of revision and to the county judge from the action of the council in like manner as an appeal lies under the provisions of this Act with regard to the cost of a work undertaken. R.S.O. 1937, c. 269, s. 35.

Assessment
of non-
abutting
land equally
benefited.

36. Where land not abutting directly upon a work is to be specially assessed, if the whole of it is equally benefited, the portion of the cost to be borne by such land shall be specially assessed upon the lots according to the extent of their frontage by an equal special rate per foot of such frontage. R.S.O. 1937, c. 269, s. 36.

37. Where land not abutting directly upon a work is to be specially assessed, and the whole of it is not equally benefited, such land shall be divided into as many districts or sections as there are different proportions of benefit so that a district or section shall embrace all the land which will be benefited in the same proportion, and its proper portion of the cost shall be assigned to each district or section, and the portion of the cost to be borne by each district or section shall be specially assessed on the lots therein according to the extent of their frontage by an equal special rate per foot of such frontage. R.S.O. 1937, c. 269, s. 37.

PROCEDURE FOR MAKING SPECIAL ASSESSMENT

38.—(1) Where the owners' portion of the cost is to be specially assessed upon the lots abutting directly on the work by an equal special rate per foot frontage, before passing the by-law for undertaking it, the council shall cause to be made, Assessment of non-abutting land unequally benefited. Where all of owners' portion assessed on abutting land.

- (a) a report as to the lifetime of the work;
- (b) a report as to the reductions, if any, which ought to be made under section 28 in respect of any lot and the aggregate amount of such reductions;
- (c) an estimate of the cost of the work;
- (d) a statement of the share or proportion of the cost which should be borne by the land abutting directly on the work and by the corporation respectively;
- (e) a report as to the number of instalments by which the special assessment should be made payable.

(2) In the case of a work part of the owners' portion of the cost of which may be specially assessed on land not abutting directly on the work, before passing the by-law for undertaking the work, in addition to procuring the reports and estimate mentioned in subsection 1, the council shall cause a further report to be made, stating, Non-abutting land.

- (a) whether it would be inequitable to charge the whole of the owners' portion of the cost on the land abutting directly on the work; and
- (b) if inequitable to do so, what portion of the cost should be borne by the corporation, what portion thereof should be specially assessed upon the land abutting directly on the work and what land not abutting directly on the work will be immediately benefited and should be specially assessed for any part of the cost and the portion of the cost which should be specially assessed upon it.

Lifetime of
work of
widening
pavement.

(3) Where the work is the widening of a pavement which has been constructed as a local improvement and the lifetime of which has not expired, the unexpired portion of the lifetime of the pavement so constructed shall be the lifetime of the work. R.S.O. 1937, c. 269, s. 38.

Special
assessment
roll.

39. Before a special assessment is imposed, the council shall cause a special assessment roll to be made, in which shall be entered,

- (a) every lot to be specially assessed in respect of the owners' portion of the cost, the name of the owner and the number of feet of its frontage to be so assessed;
- (b) every lot which, but for section 59, would be exempt from the special assessment and the number of feet of its frontage;
- (c) the rate per foot with which each lot is to be so assessed;
- (d) the number of instalments by which the special assessment is to be payable. R.S.O. 1937, c. 269, s. 39.

How
reports,
statements,
etc., to be
made.

40. The council may provide for the making of the reports, statements, estimates and special assessment roll mentioned in sections 38 and 39 in such manner and by such officer of the corporation or person as the council may deem proper, and may do so by a general by-law applicable to all works or to any class or classes of them or by a by-law applicable to the particular work. R.S.O. 1937, c. 269, s. 40.

Holding
of court of
revision.

41.—(1) Before a special assessment is imposed, a sittings of the court of revision for the hearing of complaints against the proposed special assessment shall be held.

Time and
place of.

(2) Ten days notice of the time and place of the sittings shall be given by publication, and at least 15 days before the day appointed for the sittings, a notice (Form 4) shall be mailed to the owner of every lot which is to be specially assessed. R.S.O. 1937, c. 269, s. 41.

Roll to be
kept open
for 10 days.

42. The special assessment roll shall be kept open for inspection at the office of the clerk for at least 10 days next before the day appointed for the sittings of the court of revision. R.S.O. 1937, c. 269, s. 42.

43. A statement showing under appropriate heads the actual cost of the work, verified by the certificate of the clerk, assessment commissioner, treasurer or deputy or assistant treasurer of the municipality shall be delivered to the chairman of the court of revision before the meeting of the court. Statement of cost of work for court of revision.
R.S.O. 1937, c. 269, s. 43.

44.—(1) In ascertaining the actual cost of the work under section 43 where, in the opinion of the engineer and assessment commissioner or treasurer, the cost of any unfinished portion of the work and any unsettled claims for lands taken for or injuriously affected by the work will not exceed in amount 25 per cent of the total estimated cost of the work, the engineer and assessment commissioner or treasurer may estimate the cost of such unfinished work, and the amount of all such claims, and the amount may be included in the actual cost to be ascertained and certified under section 43, and shall be deemed to be the correct amount thereof subject to any order made with reference thereto by the court of revision. Estimate of cost of unfinished work and unsettled claims.

(2) If the cost of such unfinished work and unsettled claims exceeds the amount so estimated by the engineer and assessment commissioner or treasurer, the excess over the estimated amount shall be borne by the corporation. Where estimate deficient.

(3) If the cost of such unfinished work and unsettled claims is less than the estimated cost, the balance remaining in the hands of the municipality shall be applied *pro tanto* to payment of the rates to be levied under the by-law. R.S.O. 1937, c. 269, s. 44. Where estimate excessive.

45.—(1) The court of revision shall have jurisdiction and power to review the proposed special assessment and to correct the same as to all or any of the following matters: Powers of Court.

(a) where the owners' portion of the cost is to be specially assessed against the land abutting directly on the work, as to the following matters:

- (i) the names of the owners of the lots,
- (ii) the frontage or other measurements of the lots,
- (iii) the amount of the reduction to be made under section 28 in respect of any lot,
- (iv) the lots which, but for section 59, would be exempt from special assessment,
- (v) the lifetime of the work, and
- (vi) the rate per foot with which any lot is to be specially assessed;

(b) where part of the owners' portion of the cost is to be specially assessed on land not abutting directly on the work, in addition to the matters mentioned in clause *a*, as to the lots other than those abutting directly on the work which are or will be immediately benefited by it, and as to the special assessment which such lots should respectively bear;

(c) in all cases as to the actual cost of the work.

No power
to alter
proportions
of cost.

(2) The court of revision shall not have jurisdiction or authority to review or to alter the proportions of the cost of the work which the lands to be specially assessed and the corporation are respectively to bear according to the provisions of the by-law for undertaking the work. R.S.O. 1937, c. 269, s. 45.

Omission to
assess
certain lots.

46.—(1) Where it appears to the court of revision that any lot which has not been specially assessed should be specially assessed, before finally determining the matter, the court shall adjourn its sittings to a future day and shall cause notice (Form 4) to be given to the owner of the lot of the time and place when the adjourned sittings will be held.

Time for
mailing
notice.

(2) The notice shall be mailed at least six days before the time fixed for the adjourned sittings.

Power to
fix special
assessment
of lots.

(3) If the court of revision determines that any such lot ought to be specially assessed, the court shall have jurisdiction and power to fix and determine the amount of the special assessment thereon. R.S.O. 1937, c. 269, s. 46.

When
special
assessment
roll to be
final.

47. The clerk shall make such corrections in the special assessment roll as are necessary to give effect to the decisions of the court of revision, and the roll when so corrected shall be certified by the clerk, and when so certified, except in so far as it may be further amended on appeal to the judge, the assessment roll and the special assessment shall be valid and binding upon all persons concerned and upon the land specially assessed, and the work in respect of which the special assessment roll has been made and certified shall be conclusively deemed to have been lawfully undertaken and proceeded with pursuant to and in accordance with this Act. R.S.O. 1937, c. 269, s. 47.

Appeal to
county
judge.

48.—(1) The council or the owner of a lot specially assessed may appeal to the judge of the county court from any decision of the court of revision.

Application
of Rev.
Stat., c. 24.

(2) The provisions of *The Assessment Act* as to appeals to the judge shall apply to an appeal under subsection 1.

(3) The judge shall have the like jurisdiction and powers ^{Powers of Judge.} as are conferred on the court of revision by section 45, and the provisions of section 46 shall apply where it appears to the judge that any lot not specially assessed ought to be so assessed. R.S.O. 1937, c. 269, s. 48.

BORROWING POWERS

49.—(1) The council may agree with any bank or person ^{Temporary loans.} for temporary advances to meet the cost of the work pending the completion of it.

(2) The council may, when the work undertaken is completed, borrow on the credit of the corporation at large such sums as may be necessary to repay such advances and to defray the cost of the work undertaken, including the corporation's portion of the cost, and may issue debentures for the sums so borrowed. ^{Issue of debentures.}

(3) Where the council has undertaken the construction of several sewers connected as a system of sewers, no sewer in the system shall for the purposes of subsections 1 and 2 be deemed to be completed until all the sewers in the system are completed, and there shall be added to the cost of each sewer forming part of the system its proportionate share of the whole of the interest upon the temporary loans made by the corporation pending the construction of all the sewers forming the system as if all the sewers had been constructed at the same time. ^{When sewerage works deemed to be completed}

(4) The provisions of *The Municipal Act* as to by-laws for creating debts shall apply to by-laws passed under subsection ^{Application of Rev. Stat., c. 243} 2, except that it shall not be necessary,

(a) that the by-law be submitted to or receive the assent of the electors;

(b) that any rate be imposed for the payment of the principal of so much of the money borrowed as represents the owners' portion of the cost or of the interest thereon, other than the special rate per foot frontage imposed to meet it,

and except that the debentures, save as provided by section 52, shall be payable within the lifetime of the work.

(5) The special rates imposed for the owners' portion of the cost shall form a special fund for the payment of the debentures issued under subsection 2 and the interest thereon and shall not be applicable to or be applied for any other purpose. ^{Special fund for payment of debentures.}

General rate to meet deficiency in special rate.

(6) If in any year the amount realized from the special rate imposed to provide for the owners' portion of the cost and interest is insufficient to pay the amount falling due in such year in respect of so much of the debentures as represents the owners' portion of the cost, the council shall provide for the deficiency in the estimates for the following year and levy and collect the same by a general rate, but this shall not relieve the land specially assessed from the special rate thereon.

Owners' portion not to be deemed part of debenture debt of corporation.

(7) The amount borrowed under subsection 2, in respect of the owners' portion of the cost, shall not be deemed to be part of the existing debenture debt of the corporation within the meaning of the provisions of *The Municipal Act* limiting the borrowing powers of the municipality.

Corporation's portion may be included in yearly estimates.

(8) Instead of borrowing the amount of the corporation's portion of the cost of a work undertaken, the council may include the same in the estimates of the year. R.S.O. 1937, c. 269, s. 49.

Disposal of excess sums.

(9) When the amount realized from the debentures exceeds the amount of the cost of the work, the excess sum shall be applied *pro tanto* in reduction of the rates or any of them to be levied under the by-law providing for the issue of the debentures and where all the rates have been levied under the by-law, the excess sum shall be paid *pro tanto* to the owners at the time such payment is made of the land on which the rates were levied. 1946, c. 49, s. 2 (1).

Application of subs 9.

(10) Subsection 9 shall not apply to a by-law passed prior to the 1st day of January, 1941. 1946, c. 49, s. 2 (2).

Consolidation of by-laws.

50.—(1) Where two or more works have been constructed and the by-laws provided for by subsection 2 of section 49 have been passed, instead of borrowing the separate sums thereby authorized to be borrowed and issuing debentures therefor, the council by by-law, hereinafter called the consolidating by-law, may provide for borrowing the aggregate of such separate sums and for issuing one series of debentures therefor.

Recitals.

(2) The consolidating by-law shall show by recitals or otherwise in respect of what separate by-laws it is passed.

Rates not to be imposed by consolidating by-law.

(3) It shall not be necessary that the consolidating by-law shall impose any rate to provide for the payment of the debentures issued under it or the interest thereon, but the rates imposed by the separate by-laws shall be levied, collected and applied for that purpose.

(4) In cities a consolidating by-law passed under subsection 1 may authorize the issue of debentures in one series notwithstanding that some of the debentures may be for different terms of years from the other debentures to be issued thereunder, provided the sum to be raised in each year under the consolidating by-law shall equal the aggregate of the sums which would have been raised under the separate by-laws had no consolidating by-law been passed. R.S.O. 1937, c. 269, s. 50.

Consolidating by-law may authorize debentures of different terms of years.

51. Instead of passing a by-law under section 49 in respect of each individual work, a council may pass one by-law in respect of several local improvement works giving in such by-law in respect of each work substantially the same information as would be given in several by-laws respecting such works, and may provide in such by-law for borrowing the aggregate cost of the several works and for issuing one series of debentures therefor. R.S.O. 1937, c. 269, s. 51.

One by-law for several works.

52.—(1) The council shall impose upon the land liable therefor the special assessment with which it is chargeable in respect of the owners' portion of the cost, and the same shall be payable in such annual instalments as the council shall prescribe, but not so as to extend beyond the lifetime of the work unless the work is of the class prescribed in clause 1 of subsection 1 of section 2, in which case the annual instalments may extend over a period of not more than 40 years.

Term of annual instalments of special assessment.

(2) In fixing the amount of the annual instalments a sum sufficient to cover the interest shall be added.

Interest.

(3) The council may also either by general by-law or by a by-law applicable to the particular work prescribe the terms and conditions upon which persons whose lots are specially assessed may commute for a payment in cash the special rates imposed thereon. R.S.O. 1937, c. 269, s. 52.

Commutation of special rates.

53. Any special or general rate imposed by a by-law providing for the issue of debentures to pay for the cost or part of the cost of a work undertaken under this Act may be levied by the council as soon as the by-law is passed, and no such rate heretofore or hereafter levied shall be held to be illegal by reason of the debentures in respect to which the rate is levied, or any of same, not having been issued at the time of levying the rate. R.S.O. 1937, c. 269, s. 53.

Time special or general rate may be levied.

54. The provisions of *The Assessment Act* as to the collection and recovery of taxes, and the proceedings which may be taken in default of payment thereof, shall apply to the special assessments and the special rates imposed for the payment of them. R.S.O. 1937, c. 269, s. 54.

Application of Rev. Stat., c. 24.

Where by-law quashed court may direct passing of new by-law.

55.—(1) If the special assessment in respect of it has become confirmed under section 47, no by-law for borrowing money to defray the cost of the work or for imposing the special assessment shall be quashed, set aside or adjudged to be invalid by reason of its illegality or of any defect in it, but the court in which any proceeding for quashing, setting aside or declaring to be invalid the by-law is taken shall on such terms and conditions as to costs and otherwise as may be deemed proper direct the council to amend or to repeal the by-law and, where a repealing by-law is directed, to pass a new by-law in proper form in lieu of the repealed by-law, and it shall be the duty of the council to pass such by-law or by-laws accordingly.

Liabilities incurred to be binding.

(2) Every liability or obligation incurred and every debenture issued by the corporation under the authority of any such defective or illegal by-law shall be as effectual and as binding as if the amending or new by-law directed to be passed had been passed and was in force at the time the liability or obligation was incurred or the debenture was issued.

Where court of its own motion directs passing of new by-law.

(3) Although no proceeding has been taken to quash, set aside or declare invalid the by-law, the council may of its own motion and if required by any person to whom it has incurred any liability on the faith of the by-law shall pass such amending or new by-law as may be necessary to make effectual and binding the liability so incurred and any debenture issued under the authority of such by-law, and the provisions of subsection 2 as to the effect of an amending or new by-law shall apply to any by-law so passed. R.S.O. 1937, c. 269, s. 55.

REPAIR OF WORK

Repair, maintenance and replacement of works.

56.—(1) When a work has been completed, it shall be kept in repair and maintained and may be renewed or replaced at the expense of the corporation and the corporation may by by-law provide for the issue of debentures for such renewal or replacement. 1946, c. 49, s. 3.

General duty to repair not affected.

(2) Nothing in this Act shall relieve the corporation from any duty or obligation to keep in repair the highways under its jurisdiction to which it is subject either at common law or under *The Municipal Act*, or otherwise, or impair or prejudicially affect the rights of any person who is damaged by reason of the failure of the corporation to discharge such duty or obligation. R.S.O. 1937, c. 269, s. 56 (2).

Rev. Stat., c. 243.

Compelling corporation to repair.

57.—(1) Where, at any time during the lifetime of a work undertaken, the corporation fails to keep and maintain it in a good and sufficient state of repair, and, after one month's

notice in writing by the owner or occupant of any lot specially assessed requiring the corporation to do so, does not put the work in repair, a judge of the Supreme Court, or the judge of the county court of the county in which the municipality lies, upon the application of any owner or occupant of any land so specially assessed, may make an order requiring the corporation to put the work in repair.

(2) The judge may determine what repairs are necessary and by his order may direct them to be made in such manner, within such time and under such supervision as he may deem proper. Determination as to necessary repairs.

(3) Where a person under whose supervision the repairs are to be made is appointed, the judge may fix and determine the remuneration to be paid to such person and the same shall be paid by the corporation and payment thereof may be enforced in like manner and by the same process as a judgment for the payment of money. Remuneration of person supervising.

(4) The order shall have the same effect and may be enforced in like manner as a peremptory mandamus. Effect of order.

(5) If the corporation does not comply with the order of the judge, in addition to any other remedy to which the applicant for the order may be entitled, the judge may authorize the repairs to be made by the applicant, and if made by him the cost thereof shall be ascertained and determined by the judge, and when so ascertained and determined, payment thereof may be enforced in like manner and by the same process as a judgment for the payment of money. When repairs may be made by applicant and payment therefor.

(6) An appeal shall lie to the Court of Appeal from any order made under this section. R.S.O. 1937, c. 269, s. 57. Appeal.

ASSESSMENT OF LAND EXEMPT FROM TAXATION

58. Land on which a church or place of worship is erected or which is used in connection therewith, and the land of a university, college or seminary of learning, whether vested in a trustee or otherwise, except schools maintained in whole or in part by a legislative grant or a school tax, shall be liable to be specially assessed for local improvements, notwithstanding the provisions of *The Assessment Act*. R.S.O. 1937, c. 269, s. 58. Certain lands exempt from taxation liable to be specially assessed. Rev. Stat., c. 24.

59. Land exempt from taxation for local improvements under any general or special Act shall nevertheless, for all purposes, except petitioning for or against undertaking a work, be subject to the provisions of this Act and shall be specially assessed. Land exempt from taxation for local improvements to be specially assessed.

assessed; but the special assessments imposed thereon which fall due while such land remains exempt shall not be collectable from the owner thereof, but shall be paid by the corporation. R.S.O. 1937, c. 269, s. 59.

STREET CLEANING, ETC.

Cleaning,
watering,
lighting
streets, etc.

60.—(1) The council may by by-law provide that there-after the annual cost of cleaning, clearing of snow and ice, watering, oiling, sweeping, lighting, light supplied in excess of that supplied at the expense of the corporation at large, cutting grass and weeds and trimming trees and shrubbery on any street, or any one or more of such services shall be specially assessed upon the land abutting directly on the street according to the frontage thereof, and the foregoing provisions of this Act shall not apply to such services.

Street
lighting,
apportion-
ment of cost.

(2) As to street lighting, the by-law may provide that a part of the annual cost may be assessed upon the lands abutting directly on the street and that the remainder of such cost shall be assumed by the corporation at large.

Application
to defined
areas.

(3) Instead of naming the particular street or streets, the by-law may apply to all the streets in a defined section or sections of the municipality.

Special rate.

(4) Where the council so provides the amount of the special rate imposed to defray such cost may be entered on the collector's roll and collected in like manner as other taxes.

Duration
of by-law.

(5) The by-law shall remain in force from year to year until repealed. R.S.O. 1937, c. 269, s. 60.

Power to
construct
works on
boundary
lines.

61.—(1) Where a highway forms the boundary between two or more municipalities although it lies wholly within one or partly within two or more of them, the corporations of the municipalities may agree,

- (a) to undertake in respect of the highway or any part of it any work or service which may be undertaken as a local improvement under this Act;
- (b) as to the council by which the work or service shall be undertaken;
- (c) as to whether the corporations' portion of the cost shall be provided for by borrowing or shall be included in the estimates of the year;

- (d) as to the proportions in which the corporations' portion of the cost shall be borne by such corporations respectively.

(2) The council of the municipality which according to the agreement is to undertake the work or service, hereinafter called the initiating council, shall have all the powers and perform all the duties in respect of it which may be exercised or are to be performed by the council of a municipality which undertakes a work or service as a local improvement under this Act, and the highway shall, for the purposes of the work or service, be deemed to lie wholly within and to be under the exclusive jurisdiction of the initiating council.

Powers and duties of initiating council.

(3) The clerk of the initiating council shall forthwith, after the passing of its by-law imposing the special rates to defray the owners' portion of the cost, deliver or transmit by registered post to the clerk of any municipality in which is situate any land upon which a special rate has been imposed a copy of the by-law certified under his hand and the seal of the corporation to be a true copy.

Certified copies of by-law to be sent to clerks of other municipalities.

(4) The rates required by the by-law to be levied and collected in any year upon land in any municipality other than that by the council of which the by-law is passed shall be collected by the council of such municipality in like manner as if such rates had been imposed by that council.

Collection of rates in other municipalities.

(5) The corporation of each of the municipalities other than that by the council of which the work or service is undertaken shall pay to the last-mentioned corporation the sums which are to be levied and collected in that year under subsection 4, and such payment shall be made on demand therefor at any time after the 14th day of December in that year, and shall be made whether or not such rates have been collected from the persons liable to pay them.

Payment over to initiating council.

(6) Such payment shall not relieve any land specially assessed from the special rate thereon, but it shall remain liable for the special rate until it is paid.

Payment not to relieve land assessed.

(7) Where the agreement provides that the corporations' portion of the cost shall be included in the estimates of the year, the corporation of each of the municipalities, other than that by the council of which the work or service is undertaken, shall pay to that corporation when the amount of the corporations' portion of the cost is finally determined its share or portion of such cost, and the amount so paid shall be provided for in the estimates for the then current year of the council of the corporation which is to pay it.

Payment over where corporations part included in estimates.

Where corporations' portion met by issue of debentures.

(8) Where the agreement provides that the amount required to defray the corporations' portion of the cost is to be borrowed, the corporation of each of the municipalities, except that by the council of which the work or service is undertaken, shall in each year during the currency of the debentures issued for the money borrowed pay to that corporation the same proportion of the principal and the interest payable in that year as under the agreement it is to bear of the corporations' portion of the cost, and the amount which the by-law for borrowing the money requires to be raised in that year shall be reduced by the sum so paid.

Maintenance and repair.

(9) The corporations shall bear the cost of keeping the work in repair in the proportions in which the cost of the work is to be borne by them. R.S.O. 1937, c. 269, s. 61.

Construction of bridge over ravine separating municipalities.

62.—(1) Where a ravine separates the lands of adjoining municipalities and it is deemed desirable to construct a bridge connecting the lands of the municipalities, the council of either municipality may pass a by-law for undertaking the work of constructing the bridge or of constructing the bridge combined with any other work which may be undertaken as a local improvement and the provisions of this Act shall apply except that, subject to subsections 2 and 3, no part of the cost of the work shall be assessed upon lands in the other municipality.

Agreement with other municipality as to proportion of cost to be borne by it.

(2) Where lands which will be benefited by the work lie within the limits of any municipality other than the initiating municipality, the council of the initiating municipality may agree with the council of the other municipality as to the proportion of the cost of the work to be borne by the corporation of that municipality and the lands within it, and such last-mentioned council may pass a by-law for the issue of debentures for the amount of such proportion, payable within such period not exceeding 20 years, as the council may determine, and it shall not be necessary that the by-law be submitted to the vote of the electors.

Powers of other municipality to specially assess land.

(3) The council of such other municipality may proceed under this Act for the purpose of assessing the lands within it, which will be benefited by the work their proper proportion of the amount which it has agreed to contribute to the cost of the work in the same way as if the work had been undertaken by such council and the amount to be so contributed were the cost of the work, and the proceedings shall be in accordance with the provisions of this Act. R.S.O. 1937, c. 269, s. 62.

SPECIAL PROVISIONS AS TO TOWNSHIPS, VILLAGES, ETC.

63. In addition to the works authorized to be undertaken in section 2, the council of a township or village may undertake as a local improvement the construction, renewal or replacement of water works, the laying of mains and other appliances to connect with any existing system of water works whether owned by the corporation or any other person, the construction of sewage treatment works, or the construction of such works, plant, appliances and equipment as may be necessary for street lighting. 1946, c. 49, s. 4, *part*. Additional works in townships and villages.

64.—(1) The council of a township or village may, in the by-law for undertaking any work as a local improvement, define an area in the township or village and provide that the cost of the work including debenture charges and the cost of maintenance and management of the work including the cost of the utility supplied shall be assessed and levied on the rateable property in the area. Assessment of cost of works in areas.

(2) Where the work is the construction of a watermain, sewer, sidewalk, curb, pavement or street lighting, the by-law may provide that the whole or a part of the cost of the work shall be assessed upon the lots fronting or abutting on the work and in such case the balance of the cost including debenture charges, if any, and the cost of maintenance and management including the cost of the utility supplied shall be assessed and levied on the rateable property in the area. Assessment of cost of certain works.

(3) The corporation may by by-law provide for the issue of debentures for any work undertaken under this section. Debentures.

(4) Where a local improvement area is defined under this section and the by-law provides that the cost of the work shall be assessed and levied on the rateable property in the area, it shall not be necessary to serve notice of intention to construct the work upon the owners of lots in the area. 1946, c. 49, s. 4, *part*. Notice of intention unnecessary.

65. Where a local improvement area is defined under section 64, the area may by by-law, subject to the approval of the Board, be enlarged, reduced, altered, dissolved or amalgamated with any other such area and in such case the Board shall make any necessary adjustments of the assets and liabilities of the areas affected. 1946, c. 49, s. 4, *part*. Alteration, etc., of areas.

ADOPTION OF LOCAL IMPROVEMENT SYSTEM

Adoption of
local im-
provement
system.

Rev. Stat.,
c. 243.

66.—(1) The council of a corporation by by-law passed with the assent of the municipal electors, in accordance with *The Municipal Act*, may provide that all works which may be undertaken as local improvements, or any one or more classes or descriptions of such works thereafter, or after a day named in the by-law, shall be undertaken as local improvements and not otherwise.

Repeal of
by-law.

(2) The by-law may be repealed, but only by a by-law passed with the like assent. R.S.O. 1937, c. 269, s. 65.

Renewal or
replacement
of local
improvement
works.

(3) Notwithstanding subsection 1, the council of a corporation may by by-law provide for the renewal or replacement of any local improvement work at the expense of the corporation, or partly at the expense of the corporation and partly as a local improvement, or wholly as a local improvement. 1947, c. 61, s. 1.

MISCELLANEOUS

Special
rates and
covenant
against en-
cumbrances.

67. The special assessment and the special rates charged or chargeable upon land for or in respect of the cost of any work undertaken, whether upon petition or otherwise, except so much of them as is in arrear and unpaid, shall not, as between a vendor and a purchaser, or as respects a covenant against encumbrances, or for the right to convey, or for quiet possession free from encumbrances, be deemed to be an encumbrance upon the land upon which the special rate is charged or chargeable. R.S.O. 1937, c. 269, s. 66.

When work
may be
completed.

68. Proceedings for undertaking a work begun by one council may be continued, and the work may be begun, continued and completed by a succeeding council. R.S.O. 1937, c. 269, s. 67.

Board may
prescribe
forms.

69. The Board may approve of forms of by-laws, notices and other proceedings to be passed, given or taken under or in carrying out the provisions of this Act, and every by-law, notice or other proceeding which is in substantial conformity with the form so approved shall not be open to objection on the ground that it is not in the form required by the provisions of this Act applicable thereto; but the use of such forms shall not be obligatory. R.S.O. 1937, c. 269, s. 68.

FORM 1

(Section 10)

Take notice that

1. The Council of the Corporation of the of intends to construct as a local improvement (*describe the work*) on (or in) street, between (*describe the points between which the work is to be constructed*) and intends to specially assess a part of the cost upon the land abutting directly on the work (*in case other land is to be specially assessed, add*) and upon the following land which is immediately benefited by the work (*describe the land*).

2. The estimated cost of the work is \$....., of which \$..... is to be paid by the Corporation. The estimated cost per foot frontage is \$..... The special assessment is to be paid in annual instalments.

3. A petition to the said council will not avail to prevent its construction, but a petition against the work or the manner in which it has been undertaken, may be made pursuant to section 10 of *The Local Improvement Act*, to the Ontario Municipal Board, by a majority of the owners representing at least one-half of the value of the lots which are to be specially assessed therefor.

4. A by-law for undertaking the work will be considered by the council at a meeting thereof to be held on the day of, 19....., or at a regular or special meeting thereof to be held thereafter.

Dated

Clerk

(Note.—Where that part of the municipality in which the land to be specially assessed is situate is divided into districts or sections, the form will be altered to show the special rate per foot frontage in each district or section.)

R.S.O. 1937, c. 269, Form 1; 1940, c. 28, s. 17.

FORM 2

(Section 8)

Take notice that

1. The Council of the Corporation of the of intends to construct as a local improvement (*describe the work*) on (or in) street between (*describe the points between which the work is to be constructed*) and intends to specially assess a part of the cost upon the land abutting directly on the work (*in case other land is to be specially assessed, add*) and upon the following land which is immediately benefited by the work (*describe the land*).

2. The estimated cost of the work is \$..... of which \$..... is to be paid by the Corporation. The estimated cost per foot frontage is \$..... The special assessment is to be paid in equal annual instalments and the estimated annual rate per foot frontage is cents.

3. Application will be made by the Corporation to the Ontario Municipal Board for its approval of the undertaking of the said work and any owner may within 21 days after the first publication of this notice file with the Board his objection to the said work being undertaken.

4. The said Board may approve of the said work being undertaken, but before doing so it may appoint a time and place when any objections to the said work will be considered.

Dated.....

Clerk

(Note.—Where it is intended to assess part of the cost upon non-abutting land, the form of notice is to be amended to show the cost per foot frontage and annual frontage rate to be charged against such lands.)

R.S.O. 1937, c. 269, Form 2.

FORM 3

(Section 12)

Take notice that

1. The Council of the Corporation of the of intends to construct (*describe the work*) on (or in) street between (*describe the points between which the work is to be constructed*) as a local improvement and intends to specially assess a part of the cost upon the land abutting directly on the work (*in case other land is to be specially assessed, add*) and upon the following land which is immediately benefited by the work (*describe the land*).

2. The estimated cost of the work is \$....., of which \$..... is to be paid by the Corporation, and the estimated cost per foot frontage is \$..... The special assessment is to be paid in annual instalments.

3. Persons desiring to petition against undertaking the work must do so on or before the day of, 19.....

Dated

Clerk

(Note.—Where that part of the municipality in which the land to be specially assessed is situate is divided into districts or sections, the form will be altered to show the special rate per foot frontage in each district or section.)

R.S.O. 1937, c. 269, Form 3.

FORM 4

(Sections 41 (2), 46 (1))

Take notice that

1. The Council of the Corporation of the of has constructed as a local improvement (*describe the work*) on (or in) street between (*describe the points between which the work has been constructed*).

2. The cost of the work is \$..... of which \$..... is to be paid by the Corporation. The special rate per foot frontage is \$..... The special assessment is to be paid in annual instalments.

3. The estimated lifetime of the work is years.

4. A court of revision will be held on the day of, 19....., at o'clock at the (*insert place of meeting*) for the purpose of hearing complaints against the proposed assessments or the accuracy of frontage measurements and any other complaint which

persons interested may desire to make and which is by law cognisable by the court.

(or where the court of revision proceeds under section 46)

5. You are served with this notice because the court of revision is of opinion that your lot, though not specially assessed, should be specially assessed in respect of the owners' portion of the cost of the work and an adjourned sittings of the court will be held on the day of, 19....., at o'clock at the (*insert place of meeting*) when the matter will be determined by the court.

Dated.....

Clerk

(*Note.—Where that part of the municipality in which the land to be specially assessed is situate is divided into districts or sections, the form will be altered to show the special rate per foot frontage in each district or section.*)

R.S.O. 1937, c. 269, Form 4.

CHAPTER 216

The Logging Tax Act

1. In this Act,

Interpre-
tation.

- (a) "Controller" means Controller of Revenue for Ontario;
- (b) "income" means income derived from logging operations in Ontario;
- (c) "logging operations in Ontario" includes the sale of logs in Ontario, the export of logs from Ontario, the import of logs into Ontario, the acquisition of timber in Ontario from which logs are cut, the cutting of timber in Ontario, the transportation of logs in Ontario, the delivery of logs to any sawmill, pulp or paper plant or other place for processing or manufacturing in Ontario, or the delivery of logs in Ontario to a carrier for export from Ontario, or any combination of such operations;
- (d) "taxation year" means the calendar year or where the fiscal year of the taxpayer does not coincide with the calendar year, the fiscal year ending within the calendar year;
- (e) "taxpayer" means any person who engages in logging operations in Ontario;
- (f) "Treasurer" means Treasurer of Ontario. 1950, c. 39, s. 1.

2. Every taxpayer shall for each taxation year, pay a tax ^{Tax.} of nine per cent calculated on the income in excess of \$10,000 which he derives during such year from logging operations in Ontario. 1950, c. 39, s. 2.

3.—(1) Income derived from logging operations in Ontario ^{Income} means the net profit or gain of the taxpayer during the tax- ^{defined.} ation year determined by deducting from the value of logs disposed of,

- (a) the cost of the acquisition of or the right to cut the timber from which such logs were obtained;

- (b) the cost of cutting the timber from which such logs were obtained; and
- (c) the cost of transporting such logs to the point of delivery,

or where such logs are purchased from another person,

- (d) the cost price of such logs; and
- (e) the cost of transportation of such logs from the point of receipt to the point of delivery.

Saving.

(2) Where only a part of the tax for a taxation year calculated on income derived by a taxpayer from logging operations in Ontario as defined in subsection 1 is found to be deductible from his income under clause *n* of subsection 1 of section 11 of *The Income Tax Act* (Canada), his income derived from logging operations in Ontario for that taxation year shall be, in lieu of the income described in subsection 1, the total of the amount that results from capitalizing the amount of so much of such tax as is so deductible at nine per cent and \$10,000. 1950, c. 39, s. 3.

Interpretation.

4. In this Act, "value of logs disposed of" means,

- (a) in the case of the sale by the taxpayer of logs to any person at the time of or prior to delivery to a saw-mill, pulp or paper plant or other place for processing or manufacturing thereof in Ontario, or delivery to a carrier for export from Ontario, or delivery otherwise, the sale price of such logs;
 - (b) in the case of logs processed or manufactured by the taxpayer during a taxation year, the difference between,
 - (i) the sale value of the product thereof, and the total of,
 - (ii) the cost of such processing or manufacturing including depreciation of machinery, equipment, plant, buildings, works and improvements used therein and all charges relating thereto that would be deductible under subsections 4 (except the charge described in clause *n* thereof), 5, 6, 7, 8, 9, 10, 11 and 12 of section 14 of *The Corporations Tax Act*,
- and the greater of,
- (iii) 10 per cent of the original cost of the land and of the depreciable assets including machinery,

equipment, plant, buildings, works and improvements used in the processing or manufacturing of the logs, or

- (iv) 30 per cent, in the case of saw mills, and 40 per cent, in the case of pulp and paper plants and other places used for the processing or manufacturing of the logs, of the net profit or gain derived by the taxpayer from all sources remaining after excluding therefrom the net profit or gain derived by him from, and attributable in accordance with sound accounting principles to, the carrying on of any business, or derived from or so attributable to any source, other than logging operations and the processing and manufacturing of the logs obtained from such operations,

and where such processing or manufacturing is outside of Ontario,

- (v) the cost of transportation of the logs from the point of delivery to a carrier in Ontario to the point of delivery to the sawmill, pulp or paper plant or other place used for the processing or manufacturing of the logs outside of Ontario. 1950, c. 39, s. 4.

5.—(1) Where a taxpayer purchases anything from a person with whom he is not dealing at arms-length at a price in excess of the fair market value, the fair market value thereof shall, for the purpose of computing the income of the taxpayer under sections 3 and 4, be deemed to have been paid or to be payable therefor. Inadequate consideration.

(2) Where a taxpayer sells anything to a person with whom he is not dealing at arms-length at a price less than the fair market value, the fair market value thereof shall, for the purpose of computing the income of the taxpayer under sections 3 and 4, be deemed to have been received or to be receivable therefor. Idem.

(3) Where a taxpayer pays or agrees to pay to a person with whom he is not dealing at arms-length as price, royalty, rental or other payment for use or reproduction of any property an amount computed at a rate higher than that at which similar payments by other persons in the same kind of business are computed, an amount computed at the rate at which similar payments are made by such other persons shall, for the purpose of computing the income of the taxpayer under sections 3 and 4, be deemed to have been the amount that is paid or is payable therefor. Idem.

Idem.

(4) Where a taxpayer is an incorporated company and directly or indirectly distributes to its shareholders any of its property either on winding-up, or otherwise, for no consideration or for a consideration below the fair market value, if the sale thereof at the fair market value would have increased the income of the taxpayer under sections 3 and 4, it shall be deemed, for the purpose of determining such income, to have sold the property during the taxation year and to have received therefor the fair market value thereof.

Arms-length.

(5) For the purpose of this section,

- (a) a corporation and a person or one of several persons by whom it is directly or indirectly controlled;
- (b) corporations controlled directly or indirectly by the same person; or
- (c) persons connected by blood relationship, marriage or adoption,

shall, without extending the meaning of the expression "to deal with each other at arms-length", be deemed not to deal with each other at arms-length. 1950, c. 39, s. 5.

Return.

6.—(1) A return of the income of each taxpayer for each taxation year shall, without notice or demand therefor, be filed with the Controller containing such information as is required,

- (a) in the case of a corporation, by or on behalf thereof, within six months from the end of the taxation year;
- (b) in the case of a person who has died without making the return, by his legal representatives, within six months from the day of death;
- (c) in the case of an estate or trust, within 90 days from the end of the taxation year;
- (d) in the case of any other taxpayer, on or before the 30th day of April in the next year, by that taxpayer or, if he is unable for any reason to file the return, by his guardian, committee or other legal representative;
- (e) in the case where no person described by clause *a*, *b*, *c* or *d* has filed the return, by such person as is required by notice in writing from the Treasurer to file the return, within such reasonable time as the notice specifies.

(2) Every person, whether or not he is liable to pay tax ^{Demand for return.} under this Act for a taxation year and whether or not he has filed a return under subsection 1, shall upon receipt at any time of a demand therefor in writing from the Treasurer, file forthwith with the Treasurer a return of his income for that year, containing such information as is required.

(3) Every trustee in bankruptcy, assignee, liquidator, ^{Trustees, etc.} receiver, trustee or committee and every agent or other person administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of a taxpayer who has not filed a return for a taxation year as required by this section shall file a return of the income of such taxpayer for that year.

(4) Where a taxpayer who is a partner in or who is a ^{Death of a partner or proprietor.} proprietor of a business engaged in logging operations in Ontario died after the close of a taxation year but before the end of the calendar year in which the taxation year closed, a separate return of the taxpayer's income after the close of the taxation year to the time of death shall be filed and the tax payable under this Act shall be paid thereon as if that income were the income of another taxpayer.

(5) The Treasurer may at any time extend the time for ^{Extension.} making a return under this Act. 1950, c. 39, s. 6.

7. Every taxpayer required by section 6 to file a return ^{Estimate of tax.} shall estimate in the return the amount of tax payable. 1950, c. 39, s. 7.

8.—(1) The Treasurer shall, with all due despatch, examine ^{Rules for assessment.} each return and assess the tax for the taxation year and the interest and penalties, if any, payable.

(2) After examination of a return, the Treasurer shall send ^{Idem.} a notice of assessment to the person by whom the return was filed.

(3) Liability for tax under this Act is not affected by an ^{Idem.} incorrect or incomplete assessment or by the fact that no assessment has been made.

(4) The Treasurer may, at any time, assess tax, interest or ^{Idem.} penalties and may,

(a) at any time, if the taxpayer or person filing the return has made any misrepresentation or committed any fraud in filing the return or supplying information under this Act; and

- (b) within six years from the day of an original assessment in any other case,

re-assess or make additional assessments.

Idem.

(5) The Treasurer is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Act.

Idem.

(6) An assessment shall, subject to being varied or vacated on appeal under this Act and subject to re-assessment, be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto. 1950, c. 39, s. 8.

Taxes,
when to
accrue.

9.—(1) The taxes imposed by this Act shall be deemed to be due on the last day of the taxation year of the taxpayer for which such taxes are imposed.

Dates of
payment.

(2) Every taxpayer on which a tax is imposed by this Act shall pay,

- (a) not later than the close of the taxation year in respect of which the tax is payable, an amount equal to one-half of the tax as estimated by him for the last preceding taxation year or for the taxation year in respect of which the tax is payable, at the rate applicable for such last-mentioned taxation year;
- (b) not later than the fifteenth day of the third month following the month in which the taxation year in respect of which the tax is payable closed, an amount equal to the balance of the tax as so estimated; and
- (c) at the time of making the return under subsection 1 of section 6 the balance, if any, of the tax payable as estimated by the taxpayer in the return.

Interest on
unpaid tax.

(3) Where the amount paid on account of tax payable by a taxpayer for a taxation year before the expiration of the time allowed for filing his return under section 6 is less than the amount of tax payable for the taxation year, the taxpayer liable to pay the tax shall pay interest on the difference between those two amounts from the expiration of the time for filing the return to the date of payment at the rate of six per cent per annum.

Idem.

(4) Where a taxpayer being required by subsection 2 to pay a part or instalment of tax has failed to pay all or any

part thereof as required, the taxpayer, in addition to the interest payable under subsection 3, shall pay interest on the amount he failed to pay at six per cent per annum from the day on or before which he was required to make the payment to the day of payment or the beginning of the period in respect of which he became liable to pay interest thereon under subsection 3, whichever is earlier.

(5) For the purposes of subsection 4, the taxpayer shall be ^{Idem.} deemed to have been liable to pay a part or instalment under subsection 2 computed by reference to the tax payable for,

- (a) the last preceding taxation year; or
- (b) the taxation year in respect of which the tax is payable,

whichever is lesser.

(6) No interest under this section upon the amount by ^{Limitation on interest.} which the unpaid tax exceeds the amount estimated under section 7 is payable in respect of the period beginning 20 months after the day fixed by section 6 for filing the return with respect to which the taxes are payable or 20 months after the return was in fact filed, whichever was later, and ending 30 days from the date of the mailing of the notice of the original assessment for the taxation year. 1950, c. 39, s. 9.

10.—(1) When any taxpayer is in default in complying ^{Penalty for default.} with subsection 1 of section 6, he shall be liable to a penalty of,

- (a) an amount equal to five per cent of the tax that was unpaid when the return was required to be filed, if the tax payable by him for the taxation year that was unpaid at that time was less than \$10,000; and
- (b) \$500, if at the time the return was required to be filed, tax payable by him for the taxation year of \$10,000 or more was unpaid.

(2) When any taxpayer fails to complete the information ^{Idem.} required on the return under subsection 1 of section 6, he shall be liable to a penalty of one per cent of the tax payable by him; provided that such penalty shall not be less than \$1 or more than \$20. 1950, c. 39, s. 10.

11.—(1) Every person required by section 6 to file a ^{Payments on behalf of others.} return for a taxpayer for a taxation year shall, within 30 days from the date of mailing of the notice of assessment, pay all taxes, penalties and interest payable by or in respect of that

taxpayer to the extent that he has or had, at any time since the taxation year, in his possession or control, property belonging to that taxpayer or his estate and shall thereupon be deemed to have made that payment on behalf of the taxpayer.

Certificate
before dis-
tribution.

(2) Every assignee, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, before distributing any property under his control, shall obtain a certificate from the Treasurer certifying that there are not outstanding any taxes, interest or penalties that have been assessed under this Act and are chargeable against or payable out of the property.

Liability.

(3) Distribution of property without a certificate required by subsection 2 renders the person required to obtain the certificate personally liable for the unpaid taxes, interest and penalties. 1950, c. 39, s. 11.

Refunds.

12.—(1) The Treasurer may, upon mailing the notice of assessment, refund, without application therefor, any over-payment made on account of the tax and he shall make such refund after mailing the notice of assessment if application in writing is made therefor by the taxpayer within 12 months from the date the over-payment was made or the day on which the notice of assessment was sent.

Application
to other
taxes.

(2) Instead of making a refund that might otherwise be made under this section, the Treasurer may, where the taxpayer is liable or about to become liable to make another payment under this Act, apply the amount of the over-payment to that other liability and notify the taxpayer of that action.

Interest
on over-
payment.

(3) Where an amount of \$50 or more in respect of an over-payment is refunded or applied on other liability under this section, interest shall be paid or applied for the period commencing,

- (a) six months from the day when the over-payment arose;
- (b) on the day on or before which the return in respect of which the tax was paid was required to be filed; or
- (c) on the day that the return was in fact filed,

whichever was later, and ending with the day of refunding or application aforesaid at the rate of three per cent per annum.

(4) For the purpose of this section, "over-payment" means ^{Interpre-} the aggregate of all amounts paid on account of tax minus ^{tation.} all amounts payable under this Act or an amount so paid when no amount is so payable. 1950, c. 39, s. 12.

13.—(1) Every taxpayer shall keep records and books of ^{Records} account at his place of business or at such other place as may ^{and books.} be designated by the Treasurer, in such form and containing such information as will enable the taxes payable under this Act to be determined.

(2) Where a taxpayer has failed to keep adequate records ^{Idem.} and books of account for the purposes of this Act, the Treasurer may require him to keep such records and books of account as he may specify and the taxpayer shall thereafter keep records and books of account as so required.

(3) Every taxpayer required by this section to keep records ^{Idem.} and books of account shall, until written permission for their disposal is obtained from the Treasurer, retain every such record or book of account and every account or voucher necessary to verify the information in any such record or book. 1950, c. 39, s. 13.

14.—(1) Any person thereunto authorized by the Treasurer ^{Investi-} for any purpose related to the administration or enforcement ^{gation.} of this Act may, at all reasonable times, enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or records are, or should be, kept pursuant to this Act, and

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act;
- (b) examine property described by an inventory or any property, process or matter, an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act;
- (c) require the taxpayer or manager of the property or business being examined and any other person on the premises or place to give him all reasonable assistance with his audit or examination and to answer all proper questions relating to the audit or

examination either orally or, if he so requires, in writing on oath or by statutory declaration and, for that purpose, require the taxpayer or other person to attend at the premises or place with him; and

- (d) if during the course of an audit or examination it appears to him that there has been a violation of this Act, seize and take away any of the books, records, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem.

(2) The Treasurer may, for the purposes related to the administration or enforcement of this Act, by registered letter or by demand served personally, require from any person,

- (a) any information or additional information, including a return or a supplementary return; or
- (b) production or production on oath of any books, letters, accounts, invoices, financial or other statements or other documents,

within such times as may be stipulated therein.

Inquiry.

(3) The Treasurer may authorize any person to make such inquiry as he may deem necessary with reference to anything relating to the administration and enforcement of this Act.

Copies.

(4) Where any book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced or any officer of the office of the Controller may make or cause to be made one or more copies thereof and the document purporting to be certified by the Treasurer or a person thereunto authorized by the Treasurer to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it had been proven in the ordinary way.

Compliance.

(5) No person shall hinder or molest or interfere with any person doing anything that he is authorized by or pursuant to this section to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other law to the contrary, every person shall do everything he is required by or pursuant to this section to do.

Powers.

(6) For the purpose of an inquiry under subsection 3, the person authorized to make the inquiry shall have all the powers that may be conferred upon a commissioner appointed under *The Public Inquiries Act*.

15. The Treasurer shall administer and enforce this Act <sup>Adminis-
tration.</sup> and control and supervise all persons employed to carry out or enforce this Act and the Controller may exercise all the powers and perform the duties of the Treasurer under this Act. 1950, c. 39, s. 15.

16.—(1) Any taxpayer who objects to an assessment <sup>Notice of
appeal.</sup> under this Act may, within 60 days from the date of the mailing of the notice of assessment, by himself or by his solicitor, serve a notice of appeal on the Treasurer.

(2) The notice of appeal shall be served by mailing it by ^{Service.} registered post addressed to the Treasurer.

(3) The notice of appeal shall follow Form 1 to this Act <sup>Form of
notice of
appeal.</sup> as closely as may be and shall set out clearly the reasons for appeal and all facts relative thereto. 1950, c. 39, s. 16, *amended.*

17. Upon receipt of the notice of appeal, the Treasurer <sup>Decision
of the
Treasurer.</sup> shall duly consider it, affirm or amend the assessment appealed against, and notify the appellant of his decision by registered post. 1950, c. 39, s. 17.

18.—(1) If the appellant, after receipt of the decision, <sup>Notice of
dissatisfac-
tion.</sup> is dissatisfied therewith, he may, within 60 days from the date of the mailing of the decision, mail to the Treasurer by registered post, a notice of dissatisfaction.

(2) The notice of dissatisfaction shall follow Form 2 to this Act as closely as may be and shall state that the appel- <sup>Form of
notice of
dissatis-
faction.</sup> lant desires that his appeal be set down for trial.

(3) The appellant shall forward with the notice of dissatis- <sup>Statement
with notice.</sup> faction a final statement of such further facts, statutory provisions and reasons that he intends to submit to the court in support of the appeal as were not included in the notice of appeal, or in the alternative, a recapitulation of all facts, statutory provisions and reasons included in the notice of appeal, together with such further facts, provisions and reasons as the appellant intends to submit to the court in support of the appeal. 1950, c. 39, s. 18, *amended.*

19.—(1) The appellant shall thereupon give security in ^{Security.} the sum of \$400 or such other sum as the Treasurer may

require for the costs of the appeal in a form satisfactory to the Treasurer; provided that in lieu of other security the appellant may pay into court the sum of \$200 or such other sum as the Treasurer may require, in which case the appellant shall, when paying such sum in, state the purpose for which it is paid in and shall forthwith serve a notice on the Treasurer specifying the fact and purpose of the payment.

Proceedings
voided.

(2) Unless such security is furnished by the appellant within 30 days after the mailing of the notice of dissatisfaction the appeal and all proceedings thereunder shall be null and void. 1950, c. 39, s. 19.

Decision
upon
receipt of
statement
of facts.

20. Upon receipt of the notice of dissatisfaction and statement of facts, the Treasurer shall mail by registered post to the appellant a reply admitting or denying the facts alleged and confirming or amending the assessment or any amended, additional or subsequent assessment. 1950, c. 39, s. 20.

Copy of
documents
to be filed.

21.—(1) Within 60 days from the date of the mailing of the reply, the Treasurer shall cause to be transmitted to the Registrar of the Supreme Court or the local registrar of the court for the county or district in which the appellant has his office or transacts business, to be filed in the court, copies of,

- (a) the return of the appellant, if any, for the taxation year under review;
- (b) the notice of assessment appealed;
- (c) the notice of appeal;
- (d) the decision;
- (e) the notice of dissatisfaction;
- (f) the reply; and
- (g) all other documents and papers relative to the assessment under appeal.

Matter
deemed
action.

(2) The matter shall thereupon be deemed to be an action in the court and shall be set down for trial forthwith by the Registrar or local registrar, as the case may be, and thereafter shall be proceeded with in the same manner as an action commenced in the court; provided that the court or a judge may at any time before the commencement of the trial make such other order relating to the delivery of pleadings as may be deemed proper.

(3) The practice and procedure of the Supreme Court, Supreme Court practice to govern. including the right of appeal and the practice and procedure relating to appeals, shall apply to every such action, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court. 1950, c. 39, s. 21.

22. All subsequent proceedings shall be entitled:

Title of cause.

In re *The Logging Tax Act* and the appeal of.....
.....of.....in the
Province of.....

and notice and copies of all further proceedings shall be served on the Treasurer. 1950, c. 39, s. 22, *amended*.

23.—(1) After an appeal has been set down for trial, any fact or statutory provision not set out in the notice of appeal or notice of dissatisfaction may be pleaded or referred to in such manner and upon such terms as the court or a judge thereof may direct. Conditional limitations of evidence.

(2) The court may refer the matter back to the Treasurer for further consideration. 1950, c. 39, s. 23. Matter may be referred back to Treasurer.

24. Subject to the provisions of this Act, the Supreme Court shall have exclusive jurisdiction to hear and determine all questions that may arise in connection with any assessment made under this Act and in delivering judgment may make any order as to the payment of any tax, interest or penalty or as to costs as to the court may seem right and proper. 1950, c. 39, s. 24. Jurisdiction of court.

25. An assessment shall not be varied or disallowed because of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision up to the date of the issue of the notice of assessment. 1950, c. 39, s. 25. Irregularities.

26. Any such proceedings before the Supreme Court hereunder shall be held *in camera* upon request made to the court by any party to the proceedings. 1950, c. 39, s. 26. Proceedings in camera.

27. If a notice of appeal is not served or a notice of dissatisfaction is not mailed within the time limited therefor, the right of the taxpayer assessed to appeal shall cease and the assessment shall be valid and binding notwithstanding any error, defect or omission therein or in any proceedings required by this Act. 1950, c. 39, s. 27. Right of appeal barred.

Debts to His Majesty.

28. All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to His Majesty in right of Ontario and recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act. 1950, c. 39, s. 28.

Warrant of execution.

29. Where an amount payable under this Act has not been paid, the Treasurer may upon the expiration of 30 days from the default, issue a warrant and may direct it to the sheriff of any county or district in which any property of the taxpayer is located or situated, for the amount of the tax, interest and penalty, or any of them, owing by the taxpayer to the Treasurer, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant shall have the same force and effect as a writ of execution issued out of the Supreme Court. 1950, c. 39, s. 29.

Garnishment.

30.—(1) When the Treasurer has knowledge or suspects that any person is or is about to become indebted or liable to make any payment to a taxpayer liable to make a payment under this Act, he may, by registered letter, require him to pay the moneys otherwise payable to that taxpayer in whole or in part to the Treasurer on account of the liability under this Act.

Idem.

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Idem.

(3) Every person who has discharged any liability to a taxpayer liable to make a payment under this Act without complying with a requirement under this section is liable to pay to His Majesty in right of Ontario an amount equal to the liability discharged or the amount which he was required under this section to pay to the Treasurer, whichever is lesser. 1950, c. 39, s. 30.

Priority of tax.

31. All taxes, interest, penalties, costs and other amounts payable under this Act shall be a first lien and charge upon the property in Ontario of the taxpayer liable to pay such taxes, interest, penalties, costs and other amounts. 1950, c. 39, s. 31.

Compromise.

32. If any doubt or dispute arises as to the liability of any taxpayer to pay a tax or any portion of a tax demanded under this Act, or, if owing to special circumstances, it is deemed inequitable to demand payment of the whole amount imposed under this Act, the Treasurer may accept such amount as

he may deem proper, and if the tax demanded has been paid under protest, he may refund the amount paid or any part thereof. 1950, c. 39, s. 32.

33.—(1) Every person who has failed to file a return or Offences.
any information as and when required by or under this Act is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a penalty of \$25 for each day of default.

(2) Every person who has failed to comply with or con- Idem.
travened section 13 or section 14 is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a penalty of not less than \$200 and not more than \$10,000 or to imprisonment for a term of not more than six months or to both.

(3) Every person, Idem.

(a) who has made, or participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act;

(b) who has, to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer;

(c) who has made, or assented to or acquiesced in the making of false or deceptive entries in records or books of account of a taxpayer;

(d) who has failed, or assented to or acquiesced in the failure, to enter a material particular in records or books of account of a taxpayer;

(e) who has wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or

(f) who has conspired with any person to commit any offence under clauses *a* to *e*,

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a penalty of not less than \$25 and not more than \$10,000 or to imprisonment for a term of not more than two years or to both. 1950, c. 39, s. 33.

Communi-
cation of
information.

34. Every person who, while employed in the service of His Majesty, has communicated or allowed to be communicated to a person not legally entitled thereto any information obtained under this Act, or has allowed any such person to inspect or have access to any written statement furnished under this Act, is guilty of an offence and liable on summary conviction to a penalty of not more than \$200. 1950, c. 39, s. 34.

Declara-
tions.

35. Declarations or affidavits in connection with returns filed under this Act may be taken before any person having authority to administer an oath, or before any person specially authorized for that purpose by the Lieutenant-Governor in Council, but a person so specially authorized shall not charge a fee therefor. 1950, c. 39, s. 35.

Information
or complaint.

36.—(1) An information or complaint under this Act may be laid or made by any officer of the Treasury Department or by any person thereunto authorized by the Treasurer and, where an information or complaint purports to have been laid or made under this Act it shall be deemed to have been laid or made by a person thereunto authorized by the Treasurer and shall not be called in question for lack of authority of the informant or complainant except by the Treasurer or by some person acting for him.

Two or
more
offences.

(2) An information or complaint in respect of an offence under this Act may be for one or more than one offence and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Territorial
jurisdiction.

(3) A complaint or information in respect of an offence under this Act may be heard, tried or determined by a magistrate if the accused is resident, carrying on business, found or apprehended or is in custody within his jurisdiction although the matter of the information or complaint did not arise within his jurisdiction.

Limitation
of prosecu-
tion.
R.S.C., 1927,
c. 36.

(4) An information or complaint under Part XV of the *Criminal Code* (Canada) in respect of an offence under this Act may be laid or made on or before a day five years from the time when the matter of the information or complaint arose or within one year from the day on which evidence, sufficient in the opinion of the Treasurer to justify a prosecution for the offence, came to his knowledge, and his certificate as to the day on which such evidence came to his knowledge is conclusive evidence thereof.

(5) Where by this Act provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Treasury Department sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records, that he has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed, indicating such address, and that he identifies as exhibits attached to the affidavit the post-office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, shall be received as *prima facie* evidence of the sending of the request, notice or demand. Proof of service by mail.

(6) Where by this Act a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after a careful examination and search of the records, he has been unable to find in a given case that the return, statement, answer or certificate, as the case may be, has been made by such person, shall be received as *prima facie* evidence that in such case that person did not make the return, statement, answer or certificate, as the case may be. Proof of failure to comply.

(7) Where by this Act a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that, after careful examination of such records, he has found that the return, statement, answer or certificate was filed or made on a particular day, shall be received as *prima facie* evidence that it was filed or made on that day. Proof of time of compliance.

(8) An affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that a document annexed thereto is a document or a true copy of a document made by or on behalf of the Treasurer or some person exercising the powers of the Treasurer or by or on behalf of the taxpayer, shall be received as *prima facie* evidence of the nature and contents of the document and shall be admissible in evidence and have the same probative force as the original document would have if it had been proven in the ordinary way. Proof of documents.

(9) An affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appro- Proof of no appeal.

prate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year was mailed to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of the records, he has been unable to find that a notice of appeal from the assessment or a notice of objection to the decision of the Treasurer was received within the time allowed therefor, shall be received as *prima facie* evidence of the statements contained therein.

Presump-
tion.

(10) Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Treasury Department, it is not necessary to prove his signature or that he is such an officer nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn. 1950, c. 39, s. 36.

Effect.

37. This Act shall be effective with respect to the taxation years of taxpayers ending in 1949 and subsequent taxation years. 1950, c. 39, s. 37, *amended*.

FORM 1
(Section 16 (3))

NOTICE OF APPEAL

In re *The Logging Tax Act* and
of the of in the
Province of
(Name of taxpayer)
(Address)
Appellant.

Notice of Appeal is hereby given from the assessment bearing date the day of 19....., wherein a tax of \$..... was levied in respect of income from logging operations in Ontario for the taxation of the year 19.....

- Then follow with,
1. Full statement of facts.
2. Full statement of reason for appeal.

Dated this day of 19.....
(Signature of Appellant)

1950, c. 39, Sched.

FORM 2
(Section 18 (2))

NOTICE OF DISSATISFACTION

In re *The Logging Tax Act* and the appeal of
of the of in the
Province of
(Name of taxpayer)
(Address)

I desire my appeal to be set down for trial.
Dated this day of 19.....
(Signature)

CHAPTER 217

The Long Point Park Act

1.—(1) The Lieutenant-Governor in Council may appoint ^{Board of commissioners.} a board of commissioners composed of three persons, which board shall be a body corporate by the name of The Long Point Park Commission.

(2) The commissioners shall hold office during pleasure of ^{Tenure of office.} the Lieutenant-Governor in Council.

(3) The commissioners shall receive such compensation as ^{Compensation.} is fixed by order of the Lieutenant-Governor in Council.

(4) The commissioners, at the first meeting of the Com- ^{Chairman and secretary.} mission in each year, shall elect one of their members as chairman, and shall appoint a secretary, who, for the purposes of this Act, shall possess all the rights and powers and perform all the duties that pertain respectively to the office of reeve and clerk and treasurer of a village, and with such other rights, powers and duties as from time to time may be prescribed by the Commission. R.S.O. 1937, c. 96, s. 1.

2.—(1) The tracts of land, marsh land, and land covered ^{Park vested in Commission.} by water hereinafter mentioned, that is to say:

All that parcel or tract of land and marsh land in the Township of South Walsingham bounded on the south by the waters of Lake Erie, on the north by the waters of Inner Long Point Bay, on the east by the lands now owned by the Long Point Company, and on the west by the lands now owned by the Toronto Big Creek Shooting Company, containing an area of 420 acres, more or less, together with all unpatented portions of the marsh and other lands lying in front of lots numbers 14 to 24, both inclusive, and in front of the road allowance between lots numbers 18 and 19, in the broken front concession of the Township of South Walsingham, together with the land covered by the waters of Inner Long Point Bay lying south of a line drawn east astronomically from the centre of the mouth of the present outlet of Big Creek, formerly known as the Port Rowan ship canal, to the point of intersection of said line with a line drawn north astronomically from the most westerly point of Block "C" of the lands of the Long Point Company, including any islands lying within that area,

are hereby vested in the Commission and set apart as a park, forest reservation and health resort for the benefit, advantage and enjoyment of the people of Ontario, and shall be known as Long Point Park. R.S.O. 1937, c. 96, s. 2; 1943, c. 28, s. 24.

Enlarging
the Park.

(2) The Lieutenant-Governor in Council may add to the Park any adjacent tract of land which is the property of the Crown. R.S.O. 1937, c. 96, s. 29.

Board to
inquire
into present
leases and
contracts.

3. It shall be the duty of the Commission, and it shall have power, to inquire into and ascertain the facts concerning all leases, and all other contracts or agreements, to or with persons, in reference to any of the lands in the Park, the names of the persons holding the same, the amounts of rents reserved or other payments provided for in the same, the terms and conditions under which such agreements or leases are made, and also other particulars in connection with the same. R.S.O. 1937, c. 96, s. 3.

Collection
of revenues
from
property
and sale,
etc., of such
property.

4. With respect to property now or hereafter vested in the Commission or which it may manage or control, it may demand, collect and recover from any person having the occupation or use thereof any money due for rent or otherwise and with the approval of the Department of Municipal Affairs, may dispose of any such property by sale, lease or otherwise, provided that the Commission may, without such consent, dispose of any interest in property purchased by the Commission at a tax sale, by sale, lease or otherwise. 1943, c. 28, s. 25; 1949, c. 54, s. 1, par. 1.

Powers of
Com-
mission.

5. Subject to the approval of the Department of Municipal Affairs, the Commission shall have power,

- (a) to lease, purchase or otherwise acquire, and to construct and operate boats, vessels, motor cars and other means of transportation to be used in connection with the Park;
- (b) to pull down all houses or other erections, or buildings on said lands, or such of them, or such part of them, as the Commission may think proper to be pulled down, and to sell or otherwise dispose of, or make use of, the material of the houses and other erections and buildings thus taken down and removed or otherwise disposed of or made use of;
- (c) to erect wharves, houses, and other erections, buildings and structures on said lands, and to lease or sublet the same and all other wharves, houses and other erections, buildings, and structures, with their appurtenances, which now are or hereafter may be upon said lands, to applicants therefor;
- (d) to lay out, build, improve, develop and enclose the Park in such manner as it thinks fit;

- (e) to demand, collect and receive tolls, rents, taxes, or other charges or money for the use of lands, buildings, erections, structures, appliances, vessels, means of transportation, or works made, built or used in or in connection with the operation of the Park, as well as for services rendered or to be rendered for the convenience or accommodation of visitors, and to expend so much of the money received therefrom as may in the opinion of the Commission be necessary or expedient in beautifying or otherwise improving the same as a park and place of public resort, and for all other purposes authorized by this Act, and, whenever required by an order of the Lieutenant-Governor in Council so to do, to remit to the Treasurer of Ontario any surplus remaining in the hands of the Commission. R.S.O. 1937, c. 96, s. 5; 1946, c. 50, s. 1; 1949, c. 54, s. 1, par. 2.

6. The Commission may appoint one or more constables, Constables. who shall have the same powers and perform the same duties in the Park as constables appointed by the council of a village. R.S.O. 1937, c. 96, s. 6.

7.—(1) The Commission shall have all the powers conferred by *The Municipal Act* on the board of commissioners of police in a city having a population of not less than 100,000. Powers of Commission. Rev. Stat., c. 243. R.S.O. 1937, c. 96, s. 7 (1).

(2) The Commission may pass by-laws for fixing the sums By-laws. to be paid for licences required under the by-laws passed under subsection 1. R.S.O. 1937, c. 96, s. 7 (2); 1949, c. 54, s. 1, par. 3.

(3) After the passing of any such by-law no general by-law Effect of by-laws of Commission. of the Township of South Walsingham for any of the purposes provided by such by-law shall apply. R.S.O. 1937, c. 96, s. 7 (3).

8. The Commission may also pass by-laws for protection Protection from fire. from fire, and for providing such fire appliances as it may deem necessary for the protection of life and property within the limits of the Park. R.S.O. 1937, c. 96, s. 8; 1949, c. 54, s. 1, par. 4.

9. The Commission may also pass by-laws for letting Sidewalks, roads, culverts, drains, etc. contracts, or employing labour, or purchasing material for making roads, buildings, sidewalks and culverts, putting in drains, planting trees, and otherwise improving and beautifying the Park as a park and place of public resort, and doing all things

necessary for such purposes, and the Commission may pass by-laws for entering into, and may enter into, contracts for the supply of water, light or heat by any person or company to the Park or the residents therein, and doing all things necessary for such purposes within the limits of the Park. R.S.O. 1937, c. 96, s. 9; 1949, c. 54, s. 1, par. 5.

Other
by-laws.

10. The Commission may also pass such by-laws for the proper government of the Park as may be approved by the Department of Municipal Affairs, and, subject to such by-laws, the Park shall be open to the public. R.S.O. 1937, c. 96, s. 10; 1949, c. 54, s. 1, par. 6.

Application
of Rev.
Stat., c. 320.

11. The provisions of *The Public Utilities Act*, except where inconsistent with the provisions of this Act, shall apply to the Commission. R.S.O. 1937, c. 96, s. 11.

Authentica-
tion of
by-laws.

12. By-laws passed by the Commission shall be authenticated by the signature of the chairman and secretary and the seal of the corporation, and a copy of any such by-law so authenticated shall have the same force and effect as a copy of a municipal by-law duly certified in the manner provided by *The Municipal Act*. R.S.O. 1937, c. 96, s. 12.

Rev. Stat.,
c. 243.

Penalties
for
violation of
by-laws.

13. The Commission may in any by-law provide that anyone contravening the by-laws shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$100 or to imprisonment for a term of not more than sixty days, and such penalty may be enforced by any justice of the peace having jurisdiction within the County of Norfolk. R.S.O. 1937, c. 96, s. 13.

Application
of licence
fees and
penalties.

14. All sums collected for licence fees or for penalties for offences against any by-law passed by the Commission shall be paid over to the Commission. R.S.O. 1937, c. 96, s. 14.

Repair and
maintenance
of
highways.

15.—(1) It shall be the duty of the Commission to keep the highways in the Park in proper repair. R.S.O. 1937, c. 96, s. 15.

Municipali-
ties relieved
as to
liability for
non-repair
of highways.

(2) No action shall be maintainable against the corporation of the County of Norfolk or the corporation of the Township of South Walsingham by reason of the non-repair of the highways, streets, sidewalks or bridges in the Park, or by reason of any misfeasance or nonfeasance in relation to them. R.S.O. 1937, c. 96, s. 24.

16.—(1) The Commission may raise by loan the sum of **\$25,000** for the purpose of constructing, building, leasing, purchasing, improving, extending, holding, maintaining, managing and conducting waterworks and all buildings, material, machinery and appurtenances thereto belonging, and other permanent works for a waterworks system of the Commission, and for enlarging and improving the Park, and for all other purposes and objects intended to be secured by this Act. Power to borrow to amount of \$25,000.

(2) The Commission may pass by-laws for contracting debts for any of such purposes by borrowing money, and for issuing debentures therefor, and it shall not be necessary to levy any special rate therefor. By-laws for borrowing.

(3) The whole debt and the debentures to be issued therefor shall be made payable in 30 years at furthest from the time or times when the debentures are issued. Term of debt.

(4) The amount falling due for principal and interest in each year on account of such debentures shall be payable out of the general revenues of the Commission. Provision for payment.

(5) The holder of every debenture or other obligation issued under the authority of this Act shall have a preferential charge or lien on the revenues of the Commission, and the Commission shall pay such debts in priority to all other debts. Security of debenture holders.
R.S.O. 1937, c. 96, s. 16.

17. No by-law, and no tariff of tolls, rents or other charges or payment to the Commission for the use of works, vessels, or of services, shall be acted upon or effective until approved of by the Department of Municipal Affairs. R.S.O. 1937, c. 96, s. 17; 1949, c. 54, s. 1, par. 7. Approval of by-laws, etc.

18. The Commission may provide for the assessment of all lands situate within the Park, and, as to said assessment, and for the collection of all moneys due from the owners or occupants of such land, shall perform and possess all the duties and powers provided for by *The Assessment Act* and *The Voters' Lists Act* in the case of clerks, assessors and collectors in townships, and may expend money so collected for the purposes hereinbefore set forth, and for such other purposes as may from time to time be approved by the Department of Municipal Affairs. R.S.O. 1937, c. 96, s. 18; 1949, c. 54, s. 1, par. 8. Assessment and taxation. Rev. Stat., cc. 24, 414.

19. The Commission shall have power to employ such officers, workmen and other persons as may be deemed necessary for the purposes of this Act, and the salaries, Employment of officers, workmen, etc.

wages or other compensation of such officers, workmen and other persons shall be payable out of the funds of the Commission. R.S.O. 1937, c. 96, s. 19.

Books and
accounts.

20.—(1) The Commission shall cause books to be provided and true and accurate accounts to be entered therein of all sums of money received and paid out and of the several purposes for which the same were received and paid out, and such books shall be at all times open to the inspection of the Treasurer of Ontario, and of any person appointed by him or by the Department of Municipal Affairs, or by a majority of the ratepayers in the Park, for such purposes, and any such person may take copies or extracts from such books. R.S.O. 1937, c. 96, s. 20 (1); 1949, c. 54, s. 1, par. 9.

Audit.

(2) The books and records of the Commission shall be examined annually by the provincial Auditor or such other auditor as may be designated by the Lieutenant-Governor in Council. R.S.O. 1937, c. 96, s. 20 (2), *amended*.

Annual
report.

21. On or before the 1st day of December in each year the Commission shall report to the Department of Municipal Affairs the receipts and expenditures of the year and such other matters as may appear to it to be of public interest in relation to the government of the Park, or to anything arising out of this Act, and shall in all cases supply to the Department of Municipal Affairs such information relating thereto as it may direct. R.S.O. 1937, c. 96, s. 21; 1949, c. 54, s. 1, par. 10.

Actions
against
commissioners.

22. Without the authority of the Lieutenant-Governor in Council no action shall be brought against the commissioners personally for anything done or omitted to be done under this Act. R.S.O. 1937, c. 96, s. 22.

Municipal
and school
purposes.

23.—(1) For municipal and school purposes the Park shall be deemed to be separated from and shall not form part of the Township of South Walsingham or of the County of Norfolk, and shall cease to be subject to the jurisdiction thereof except for judicial purposes. R.S.O. 1937, c. 96, s. 23.

Judicial
purposes.

(2) For all judicial purposes the Park shall be and remain a portion of the County of Norfolk. R.S.O. 1937, c. 96, s. 26.

Elections to
Assembly,
voters' lists.

24. For purposes of election to the Assembly the Park shall be and remain a portion of the Township of South Walsingham and all persons in the Park possessing the necessary qualifications shall be entitled to be placed on the voters' lists of that township, and for such purposes the Commission shall, annually, before the 15th day of July,

prepare and furnish to the clerk of that township a list of persons so qualified and, for the information of the clerk of that township, shall furnish all particulars required in preparing the lists under *The Voters' Lists Act*. R.S.O. 1937, ^{Rev. Stat.,} c. 96, s. 25. ^{c. 414.}

25. Nothing in this Act shall be deemed to confer upon the Commission any power to interfere with the rights of the owners of the property of the Long Point Company or the Toronto Big Creek Shooting Club, Limited. R.S.O. 1937, ^{Rights of certain clubs preserved.} c. 96, s. 28.

CHAPTER 218

The Lord's Day (Ontario) Act

1. Where a by-law passed under section 2 is in force and subject to its provisions, it shall be lawful for any person ^{Sunday sports may be made lawful.} between half-past one and six o'clock in the afternoon of the Lord's Day to provide, engage in, or be present at any public game or sport that is specified in such by-law and which but for this Act would be unlawful under section 6 of the *Lord's Day Act* (Canada), or to do or engage any other person to do any work, business or labour in connection with any such public game or sport which but for this Act would be unlawful under section 4 of the *Lord's Day Act* (Canada). 1950, c. 40, s. 1. ^{R.S.C., 1927, c. 123.}

2.—(1) Subject to section 3, the council of any city, town, village or township may pass a by-law declaring section 1 to ^{Implementing by-law authorized.} be in force in the municipality or in such part or parts thereof as may be specified in the by-law, and upon such by-law coming into force, section 1 shall apply in the municipality or in the specified part or parts, as the case may be.

(2) The application of section 1 shall be limited to such ^{Sports to be specified.} public games or sports as are specified in the by-law.

(3) The by-law shall not specify horse-racing as a public ^{Horse-racing.} game or sport.

(4) Where section 1 applies in specified parts of a municipality the limitation authorized by subsection 2 may differ in ^{Different sports in different parts.} different parts.

(5) The by-law may reduce the period of time between half-past one and six o'clock mentioned in section 1. ^{Reduction of hours.}

(6) The by-law shall provide for the regulation and control of the public games and sports specified in it and may provide for the regulation and control of any matter or thing in connection with such public games and sports. 1950, c. 40, s. 2. ^{Regulation and control.}

3.—(1) No by-law under section 2 shall be passed until the following question has been submitted to the electors: ^{Condition precedent to passing of by-law.}

Are you in favour of public games and sports on the Lord's Day to be regulated by municipal by-law under the authority of *The Lord's Day (Ontario) Act*?

Initiation of
by-law by
council.

(2) The council may submit the question set out in subsection 1 to the electors at any time.

Initiation of
by-law by
petition.

(3) Upon the presentation of a petition requesting that a by-law under this Act be passed, signed by at least 10 per cent of the electors of the municipality, the council shall before or at the next municipal election submit the question set out in subsection 1 to the electors, but if a petition is presented in the month of November or December in any year it shall be deemed to be presented in the month of February next following. 1950, c. 40, s. 3 (1-3).

Condition
precedent
to repeal
of by-law.

4.—(1) No by-law passed under section 2 shall be repealed until the following question has been submitted to the electors:

Are you in favour of the repeal of the by-law passed under the authority of *The Lord's Day (Ontario) Act* that regulates public games and sports on the Lord's Day?

Initiation
of repealing
by-law
by council.

(2) The council may submit the question set out in subsection 1 to the electors at any time.

Initiation
of repealing
by-law
by petition.

(3) Upon the presentation of a petition requesting that the by-law passed under section 2 be repealed, signed by at least 10 per cent of the electors of the municipality, the council shall before or at the next municipal election submit the question set out in subsection 1 to the electors, but if a petition is presented in the month of November or December in any year it shall be deemed to be presented in the month of February next following. 1950, c. 40, s. 4.

Presentation
and
sufficiency
of petition.

5. Any petition mentioned in section 3 or 4 shall be deemed to be presented when it is lodged with the clerk of the municipality and the sufficiency of the petition shall be determined by him and his certificate as to its sufficiency shall be conclusive for all purposes. 1950, c. 40, s. 5.

Where
daylight
saving time
in effect.

6. If and so long as the time commonly observed in a municipality in which a by-law passed under section 2 is in force is one hour in advance of standard time, the times mentioned in section 1 or in such by-laws shall be reckoned in accordance with the time so commonly observed and not standard time. 1950, c. 40, s. 6.



